165 US 695

Supreme Court of the United States

163-695

839

TRANSCRIPT OF RECORD

FROM THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS.,
Plaintiff in Error,

vs.

JOHN M. DENNISON, J. G. WILSON AND FRANK T. REDWOOD.
Defendants in Error.

ON PETITION FOR CERTIORARI.

ROBERTS, PRINTER, BIRMINGHAM.

TRANSCRIPT OF RECORD

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

November Term, 1894.

No. 342.

THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS.,
Plaintiff in Error,

vs.

JOHN M. DENNISON, J. G. WILSON AND FRANK T. REDWOOD.
Defendants in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI, EASTERN DIVISION.

Filed Jan. 3, 1895.

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UNITED STATES OF AMERICA,

Fifth Judicial District.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun and held on the third Monday of November, A. D. 1894, in the court room of said Court in the city of New Orleans, State of Louisiana, before the Honorable Don. A. Pardee, United States Circuit Judge for the Fifth Judicial Circuit, the Honorable A. P. McCormick, United States Circuit Judge for the Fifth Judicial Circuit, and the Honorable Harry T. Toulmin, United States District Judge for the Southern District of Alabama.

The Mayor and City Council of Columbus, Mississippi,
Plaintiff in Error,
vs.
John M. Dennison, James G. Wilson and Frank T. Redwood,
Defendant in Error.

Be it remembered, that heretofore, to-wit: on the 3d day of January, 1895, a transcript of the record of the above styled cause from the Circuit Court of the United States for the Northern District of Mississippi, was filed in the office of the clerk of said United States Circuit Court of Appeals, and is in the words and figures following, to-wit:

Caption to Transcript.

UNITED STATES CIRCUIT COURT,
Northern Dist. of Mississippi, Eastern Division.

Proceedings had in the Circuit Court of the United States, for the Eastern Division of the Northern Judicial District of Mississippi, begun and held for its October term A. D. 1894, at the United States Court Room in Aberdeen, Mississippi, on to-wit, the 2nd day of April, 1894, and days and terms subsequent thereto, in the following cause:

JOHN M. DENNISON, *et al*,
vs
THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS. — No. 265.

Be it remembered, that on the 26th day of March, 1894, said plaintiffs filed their declaration in the words and figures following, to-wit:

Declaration.

1 CIRCUIT COURT OF THE UNITED STATES for the Eastern Division of the Northern District of Mississippi. At Law.

John M. Dennison *et al*, Plaintiffs.
No. 265. vs.
The Mayor and City Council of Columbus, Miss. Defendants.

Now come John M. Dennison, James G. Wilson and Frank T. Redwood, all citizens of the State of Maryland, plaintiffs by their attorneys, and complain of the Mayor and City Council of Columbus, a Municipal Corporation and citizen of the State of Mississippi, domiciled and located in the County of Lowndes in said Eastern Division of the Northern District of Mississippi, defendant, in action of debt.

For that whereas, heretofore to-wit, on or about February 1st, 1882, said City of Columbus, under and by virtue of a vote of more than two-thirds of the qualified voters of said City, authorizing a subscription by way of donation, and of the laws of said State of Mississippi, issued its one hundred bonds of the denomination of One Thousand Dollars each, numbered from 1 to 100 consecutively, payable to the Columbus, Fayette & Decatur Railroad Company or bearer, due twenty years after date, each bearing interest at the rate of 6 per cent per annum, payable semi-annually on the first days of February and August of each year thereafter, evidenced by coupons of $30.00 each for said interest, attached, payable to bearer, and delivered said bonds and coupons to the Georgia Pacific Railway Company,

2 into which said Columbus, Fayette & Decatur Railroad Company had been merged, the said merger and delivery being under an Act of the Legislature of said State of Mississippi, entitled "An Act to ratify and confirm the several Acts of consolidation, merger and sale of certain railroad companies in this State into one Company, to be known as the Georgia Pacific Railway Company," approved March 4th, 1882, and the plaintiffs aver they become and are the bona fide holders for value of ninety-eight of said bonds numbered from 1 to 98 consecutively with the coupons of interest attached, maturing on February 1st, 1894, and thereafter, the coupons of interest previously due having all been paid promptly by said City, and the taxes duly collected by said City to pay said coupons due February 1st, 1894, and said coupons due February 1st, 1894, were duly presented at maturity at the office of the secretary and treasurer of said City for payment, amounting to $2940.00, and on his refusal to pay the same were duly protested for non-payment, and the plaintiffs aver that although said ninety-eight coupons amounting to said $2940.00 are justly due to plaintiffs and have been duly presented for payment, yet said Mayor and City Council of Columbus have hitherto failed and refused and still fail and refuse to

pay the same, or any of them, or any part thereof, to plaintiffs damage of $5000.00, and hence they sue and file as a part of this declaration a copy of one of said bonds numbered one (1) and the coupon due February 1st, 1894, the other bonds and the other coupons due February 1st,
3 1894, being identical, except in the number, but all of which plaintiffs will produce on the trial, or as the Court may direct. And plaintiffs sue for and demand the said amount of $2940.00, the amount of said coupons, with interest, protest fees, damages and costs.

Joseph Packard, Jr.,
and Critz & Beckett,
Attorneys for Plaintiffs.

Bond.

$1000. No. 1.

United States of America—State of Mississippi,
County of Lowndes, City of Columbus.

Twenty years after date the City of Columbus, in the County of Lowndes and State of Mississippi, promises to pay to the Columbus, Fayette & Decatur Railroad Company or bearer One Thousand-Dollars, with interest thereon at 6 per cent per annum from February 1st, 1882, said interest payable semi-annually at the agency of the said City of Columbus in the city of New York, State of New York, or at the office of the secretary and treasurer of said City of Columbus, as represented by the coupons hereto attached, and at which said places of payment or either of them this bond is also made payable at maturity. This bond being one of one hundred of the same denomination numbered from one to one hundred consecutively, and being in part of a donation of one hundred thousand dollars to the Columbus, Fayette & Decatur Railroad Company authorized by a vote of two-thirds of the qualified voters of said City of Columbus, at an election held in said City on the 8th day of May,

1872, and in pursuance of an Act of the Legisla-
4 ture of the State of Mississippi, entitled "An Act Supplemental to an Act entitled an Act to authorize the Columbus, Fayette & Decatur Company to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama, approved April 6th, 1871." Approved February 1st, 1872.

Witness the signature of the Mayor and Secretary and Treasurer of said City of Columbus, together with the seal of said City of Columbus, this 1st day of February. A. D. 1882.

(Seal) C. E. Dancy,
Mayor.

Wm. R. Cannon,
Secretary and Treasurer.

Coupon.

Coupon.

$30.00. The City of Columbus, in the County of Lowndes, State of Mississippi, will pay to bearer at the agency of the said City of Columbus in the City of New York in the State of New York, or at the office of the Secretary and Treasurer of said City of Columbus, on the first day of February, 1894, thirty dollars, being semi-annual interest on bond No. 1.

C. E. Dancy,
Mayor.

Protest.

United States of America,
The State of Mississippi,
County of Lowndes.

By this public instrument be it known that on this 3rd day of February, 1894, at the request of the First National Bank, of Columbus, Miss., the holder of the original coupon of which a true copy is below written, I, E. P. Richards,

clerk of the Chancery Court of said County and ex-officio Notary Public, residing in the City of Columbus, qualified according to law, I went to the office of the secretary and treasurer of the City of Columbus, Miss., and then and there I presented the said coupon to S. W. Baker, secretary and treasurer and demanded payment thereof, which was refused, the said S. W. Baker, secretary and treasurer, stating that he was authorized by the Mayor and City Council not to pay the interest coupons when presented for payment, whereupon I, the said clerk of the Chancery Court of said county, and ex-officio Notary Public, at the request aforesaid do hereby solemnly and publicly protest the said original coupon as well against the drawer thereof as the acceptors, endorsers and all who may be connected therein for all exchange, re-exchange, costs, charges, damages and interest suffered or to suffer for the non-payment of said original coupon.

This solemnly done and protested.

Given under my hand and the seal of my office at Columbus, Miss., the day and year above written.

E. P. Richards, Chan. Clk.
and ex-officio Notary Public
Lowndes County, Miss.

Copy. $30.00. The City of Columbus, in the County of Lowndes, State of Mississippi, will pay the bearer at the agency of the said City of Columbus in the City of New York in the State of New York, or at the office of the Secretary and Treasurer of said City of Columbus, on the first day of April, 1894, thirty dollars, being semi-annual interest on Bond No. 1.

C. E. Dancy,
Mayor.

Endorsed:

Filed and Summons issued March 26, 1894.

G. R. Hill, Clerk.

6 (Said summons was issued March 26, 1894, and return made thereon in the words and figures following, to-wit:)

Summons.

The President of the United States,

To the Marshal of the Northern District of Mississippi—Greeting: We command you without delay, to summon the Mayor and City Council of Columbus, Mississippi, citizens of the State of Mississippi, residing in the Eastern Division of the Northern District thereof, that they be and appear before the Circuit Court of the United States, to be held in the town of Aberdeen, for the said Eastern Division of the Northern District of Mississippi, on the first Monday of April next, to answer the complaint of John M. Dennison *et al*, citizens of the State of Maryland, and that it do file its plea or defence with the Clerk of said Court, on or before the meeting of the same, or judgment will be given against it by default, and have then and there this writ.

Seal.] Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, at Aberdeen, the first Monday of ——— A. D. 1894, and —— year of the Independence of the United States.

Issued the 26th day of March, 1894.

G. R. Hill, Clerk.

Cause of Action.

United States of America, Northern District of Mississippi.

This action is brought to recover on ninety-eight coupons on Bonds for the sum of $30.00 each dated 1st day of ———, 1892, and due first day of February, 1894.

Said sum of meney and interest thereon, $2940.00, is the demand. (L. S.)

G. R. Hill,
Clerk.

Marshal's Return.

Executed March 27th, 1894 (at 8 o'clock, p. m.) at Columbus, Mississippi, upon A. J. McDowell, Mayor of the City of Columbus, by handing to him personally a
7 true copy of this writ.

D. T. Guyton,
U. S. Marshal.
By W. R. Lacey, Dept. Mar.

(On the 2nd April, 1894, defendant filed its demurrer to the declaration in the words and figures following, to-wit:)

Demurrer to Declaration.

The United States of America,
Eastern Division of the Northern
District of Mississippi. } Circuit Court.

John M. Dennison, *et al*,
No. 265.] vs.
The Mayor and City Council
of the City of Columbus,
Mississippi.

And now comes the defendant, the Mayor and City Council of the City of Columbus, by its attorneys, and defends the wrong and injury, when, &c., and says that the declaration and the matters therein contained in manner and form as the same are in and by said declaration stated and set forth are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action against this defendant.

And that it is not bound to answer the same, wherefore, by reason of the insufficiency of said declaration the defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining his aforesaid action against it.

And said defendant states, and shows to the Court the following causes of demurrer to the said declaration; that is to say:

First: In and by said declaration it appears that this defendant is a "Municipal Corporation" of the State of Mississippi. And it is not shown by said declara-
8 tion that said Municipal Corporation had been authorized to issue the bonds or coupons in said declaration mentioned and set forth.

Second: It does not appear by or from said declaration that the vote of the voters of said City of Columbus, by virtue of which it is alleged that said bonds were issued, was had or taken by or under legislative authority authorizing such vote to be had or taken.

Third, The authority under which the alleged vote of the voters of the City of Columbus, by virtue of which it is alleged said bonds and coupons were issued, is not set out or pleaded.

Fourth: Said declaration shows that the voters of the City of Columbus authorized the issuance of bonds to the Columbus, Fayette & Decatur Railroad Company and that the same were issued and delivered to the Georgia Pacific Railway Company, and does not show that such issue and delivery was authorized by a vote of the qualified voters of the City of Columbus.

Four-and-a-half: It does not appear that the Columbus, Fayette & Decatur Railroad Company are not still entitled to require said bonds to be issued to it.

Fifth: Said declaration and the Act of the Legislature of the State of Mississippi entitled "An Act to ratify and confirm the several Acts of consolidation, merger and sale of certain Railroad Co's in this State into one Co. to be known as the Georgia Pacific Railway Company, Ap-
9 proved March 4th, 1882, which is referred to and pleaded in said declaration, show that the bonds in said declaration mentioned were declared to be payable to the Georgia Pacific Railway Company without the assent of two-thirds of the qualified voters of the City of Columbus at a special or regular election held in said City.

Sixth: The Acts of the Legislature referred to in said declaration declaring the bonds in said declaration mentioned to be payable to the Georgia Pacific Railway Company, was in violation of Section 14 of Article 12 of the Constitution of the State of Mississippi, in force at the date of the passage of said Act, and conferred no authority on the municipal corporation to deliver said bonds to said Georgia Pacific Railway Company.

Seventh: The bond filed with and made a part of said declaration shows that the bonds and coupons alleged to have been issued and which form the basis of this suit, was authorized by a vote of two-thirds of the qualified voters of Columbus, as a donation of one hundred thousand dollars to the Columbus, Fayette & Decatur Railroad Company, and the Act referred to in said bond in pursuance of which said bond and coupons are alleged to have been issued, conferred no authority upon the said municipal authority to make a donation to said Railroad Company or to issue bonds to it as a donation, or to submit to the voters of said municipality, whether they would make a donation.

Eight: The Act of the Legislature of the State of Mississippi entitled "An Act supplemental to an Act, entitled 'An Act to authorize the Columbus, Fayette & Decatur Railroad Company to commence, build and operate a Railroad or way from Columbus, Mississippi, to the State line of Alabama,' Approved, April 6th, 1871,"
10 Approved, Feb'y 1st, 1872, which Act is referred to in the bond filed with and made a part of said declaration, as the authority for the issuance of the bond and coupons on which this suit is based, did not authorize the defendant to issue bonds as a donation to the Columbus, Fayette & Decatur Railroad Company.

Ninth: Said Act so referred to in said bond as the authority for its issuance, authorized the authorities of the City of Columbus to submit to the qualified voters of said City the question of "Subscription" or "No Subscription"

and did not authorize a donation.

Tenth: Said declaration and the bond filed as part thereof show that said bonds were issued in pursuance of a vote taken near ten years before their pretended issuance.

Eleventh: Said declaration and the Act of the Legislature set forth therein, entitled "An Act to ratify and confirm the several acts of consolidation, merger and sale of certain Railroad Companies in the State into one company, to be known as the Georgia Pacific Railroad Company," approved March 4th, 1882, show that before the bonds and coupons, which are the basis of this suit were issued, the Railroad Company in aid of which said bonds were authorized by a vote of the voters of said City, had ceased to exist.

Twelfth. The Act of the Legislature of Mississippi referred to in the bond as the act by the authority of which the bonds and coupons upon which this suit is based were issued, and the Act to which said act is a supplement,
11 authorized aid to the Columbus, Fayette & Decatur Railroad Company, a railroad chartered by the State of Alabama, and under said Act and charter so referred to by said Acts of the Mississippi Legislature, said railroad was created with one terminus at Decatur, Alabama, and the other at Columbus, Mississippi, and was and is shown to be an entirely distinct road, with different termini and to run in different directions from the Georgia Pacific Railway Company, to which said coupons and bonds were issued.

Thirteenth. The Acts of the Legislature referred to in the bond set out and made part of the declaration, and the Acts and charter therein referred to, show that the railroad which this defendant was authorized to aid was a different road from that to which said bonds were shown to have been delivered.

Fourteenth. The Act of the Legislature of the State of Mississippi entitled "An Act to ratify and confirm the sev-

eral Acts of consolidation, merger and sale of certain railroad companies in thia State into one company, to be known as the Georgia Pacific Railway Company," approved March 4th, 1882, referred to in said declaration, show that the railroad company to which the bonds sued on were directed to be issued, was for the purpose of constructing a continuous line of railroad from the City of Atlanta in Georgia to the Mississippi river in the State of Mississippi, whereas the Act recited in the bond and the Legislative Acts and the charter referred to in said Act show that the power given to this defendant was to aid a railroad company,
12 with termini at Decatur, Alabama, and Columbus, Mississippi.

Fifteenth. It is shown in and by said declaration that the bonds and coupons which form the basis of this suit, were voted under an authority to aid one railroad, and that they were issued to another; and it is not shown that the railroad company to which the same were issued, or the railroad built or to be built by it, was substantially the same.

Arnold & Evans,
Wm. Baldwin,
Attys. for Deft.

Filed Aril 2nd, 1894.
G. R. Hill, Clerk.

(On the 3rd April, 1894, defendant, filed its pleas in the words and figures following, to-wit:)

Defendant's Pleas---1 to 15.

The United States of America.
Eastern Division of the Northern District of Mississippi. } Circuit Court.

JOHN M. DENNISON, and others,
265.] vs
THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS.

And now comes the defendant "The Mayor and City

Council of the City of Columbus (a municipal corporation) by its attorneys and defends the wrongs and injuries when, &c., and says, that the said supposed bonds and coupons in the declaration set forth, are not the acts or deeds of this defendant.

And of this, defendant puts itself upon the country.

Second. And for further plea in this behalf de-
13 fendant says, that it does not owe the said sum of money in said declaration demanded, or any part thereof in manner and form as the said plaintiffs have complained against it. And of this it puts itself upon the country.

Third. And for other and further plea in this behalf defendant says, that "The Columbus, Fayette & Decatur Railroad Company" was chartered in the State of Alabama under an Act of the General Assembly of said State, approved December 29th, 1868, entitled "An Act to provide for the creation and regulation of Railroad Companies in the State of Alabama" (see pamphlet acts of 1868, page 462 *et seq.*) by which act it was provided among other things as follows, to-wit:

Section 1. Be it enacted by the General Assembly of Alabama, That any number of natural persons not less than five, may become a body corporate, with all the rights, powers and privileges conferred, and made subject to all the restrictions of this Act.

Section 2. Be it further enacted, That any number of persons as aforesaid associating to form a company for the purpose of constructing a railroad shall, under their hands and seals make a certificate which shall specify as follows:

1st. The name assumed by such company and by which it shall be known.

2nd. The name of the place of the termini of said road, and the county or counties through which such
14 road shall pass.

3rd. The amount of capital stock necessary

to construct such road. Such certificate shall be acknowledged before a Justice of the Peace and certified by the Clerk of the Circuit Court, and shall be forwarded to the Secretary of State, who shall record and carefully preserve the same in his office and a copy thereof duly certified under the Great Seal of the State of Alabama, shall be evidence of the existence of such Company.

Sec. 3. Be it further enacted, That when the foregoing provisions have been complied with, the persons named as corporators in said certificate, are hereby authorized to carry into effect the objects named in said certificate, in accordance with the provisions of this Act, and they and their associates, successors and assigns, in the name and style provided in such certificate, shall thereafter be deemed a body corporate with successors, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure all such real and personal estate as may be necessary and convenient to carry into effect the objects for which it was created; and such company shall possess all the powers and be subject to all the rules and restrictions provided by this Act.

That in pursuance of said act, on to-wit the 7th day of February, A. D. 1871, certain persons, to-wit:

Harrison Hale, J. T. Smith, I. B. Tyler, J. C. Robertson, John C. Moore, and W. H. Kennedy made a certificate under their hands and seals by which they certi-
15 fied, that in accordance with said act they had formed themselves into a company, which should be known under the name and style of The Columbus, Fayette and Decatur Railroad Company, for the purpose of building a railroad, one terminus of which should be at Columbus, Mississippi, and the other at Decatur, Alabama. That said railroad should pass through the counties of Lowndes in Mississippi, and Sanford, Fayette, Walker, Winston, Laurence and Morgan in Alabama, and that the capital stock of said company should be one million dollars, in shares of fifty dollars each.

Which certificate was, on to-wit, the 7th day of February, 1871, duly acknowledged before a Justice of the Peace in and for the county of Fayette, in said State of Alabama, and was duly certified by the Clerk of the Circuit Court of said county of Fayette, and was forwarded to the Secretary of State of the State of Alabama, and duly filed by him on the 16th day of February, A. D. 1871. (All of which may be fully seen by a duly authenticated copy of said certificate herewith filed and made a part of this plea.)

That afterwards by an act of the Legislature of the State of Mississippi, entitled "An act to authorize the Columbus, Fayette and Decatur Railroad Company of Alabama, to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama," approved April 6th, 1871, it was enacted among other things as follows:

Section 1. Be it enacted by the Legislature
16 of the State of Mississippi, that the Columbus, Fayette & Decatur Railroad Company, chartered by the State of Alabama, by Act of the General Assembly of Alabama, entitled "An act to provide for the creation and regulation of railroad companies in the State of Alabama," December 29th, 1868, shall be permitted to survey, build and operate a railroad from the town of Columbus, to the State line of Alabama, as a part of said railroad.

Section 2. Be it further enacted, That the said Columbus, Fayette & Decatur Railroad Company shall be entitled to all the privileges, rights and immunities, and subject to all such restrictions as are granted, made and prescribed for the benefit, government and direction of said Columbus, Fayette & Decatur Railroad Company, by act above recited.

That by an act of the Legislature of the State of Mississippi entitled "An act supplemental to an act entitled 'An act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama, to commence, build and ope-

rate a railroad or way from Columbus, Mississippi, to the State line of Alabama,' approved April 6th, 1871," approved February 1st, 1872, it was provided that " Upon application of the President of the Board of Incorporation, or other authorized agent of the said Columbus, Fayette & Decatur Railroad Company, to the constituted authorities of the City of Columbus or the County of Lowndes, in the State of Mississippi, for a subscription to aid in the construction of said railroad, said constituted authorities are hereby
17 required without delay to give notice that in twenty days from the date of said notice, that the question of "subscription" or "no subscription" by said City or County to said railroad will be submitted to the qualified voters of said City or County, at a General or Special election to be held therein, which said election shall be held at the usual place of voting, and shall be conducted in all respects as other elections in said City or County; and if, at such election two-thirds of the qualified voters shall be in favor of such "subscription," then the constituted authorities of said City or County shall and are hereby authorized and required, whenever the terms of said subscription are complied with by said railroad Company, without delay to issue their bonds due and payable at a time certain, and bearing such rate of interest as may be agreed upon, to the president and incorporation of said railroad Company, or their successors, to the amount of said subscription, and said constituted authorities of said city or county, shall make such assessments upon the taxable property of said city or county making such subscription, as shall be necessary to pay the amount so subscribed, together with the interest stipulated in said bonds as it falls due; Provided that the rate of interest shall not exceed eight per cent per annum."

And defendant says that " The Georgia Pacific Railway Company" to which the bonds and coupons, which are the basis of this suit were issued and delivered, was incorporated by an act of the Legislature of the State of Mississippi enti-

tled "An act to incorporate the Georgia Pa-
18 cific Railway Company and to define and enlarge its powers in the State of Mississippi," approved February 15th, 1882, with the view of building and operating a continuous line of railroad from Atlanta, in the State of Georgia to the Mississippi river either by way of Columbus or Aberdeen, as the Company might thereafter determine to be best. And defendant says that the Georgia Pacific Railway Company was a different company with different purposes and organized with a view of building a different railroad from that which this defendant was authorized to aid. And this defendant is ready to verify.

Fourth. And for other and further plea in this behalf defendant says, That the bonds and coupons which are the basis of this suit were issued and delivered to the Georgia Pacific Railway Company, a corporation created and chartered for the purpose of building a line of railroad from Atlanta, in the State of Georgia to the Mississippi river by way of Columbus or Aberdeen, as said Company might determine, while the legislative authority under which the corporate authorities of this defendant corporation undertook to act in making said issue, authorized bonds and coupons to be issued in aid of "The Columbus, Fayette & Decatur Railroad Company," a corporation chartered for the purpose of building a railroad with its termini at Decatur, in the State of Alabama, and at Columbus, in the State of Mississippi.

And defendant says that said Georgia Pacific Railway
Company was another and different Company
19 chartered with different powers and for different purposes from the said Columbus, Fayette & Decatur Railroad Company. And this defendant is ready to verify.

Fifth. And for other and further plea in this behalf defendant says, That the citizens of Columbus, being anxious to procure the advantages which would result to said City by the building and construction of a railroad to pass through

the counties of Lowndes, in the State of Mississippi, and of Sanford, Fayette, Walker, Winston, Laurence and Morgan, in the State of Alabama, with one terminus in Decatur, in the State of Alabama, and the other at the said City of Columbus, authority was conferred upon said City of Columbus by an act of the Legislature of the State of Mississippi, entitled "An act supplemental to an act entitled an act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama, to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama, approved April 6th, 1871." Approved February 1, 1872, to subscribe in aid of said Columbus, Fayette & Decatur Railroad, and to issue bonds in payment of such subscription, which said Columbus, Fayette & Decatur Railroad Company had been chartered in the State of Alabama for the purpose expressly declared in its charter of building a railroad through the counties aforesaid, with the termini aforesaid, which said charter had been ratified and confirmed by an act of the Legislature of the State of Mississippi, entitled "An act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama," approved April 6, 1871. That afterwards, to-wit: Subsequent to the 4th day of October A. D. 1882, the constituted authorities of the City of Columbus, issued and delivered said bonds to the Georgia Pacific Railway Company, a corporation chartered by an act of the Legislature of the State of Mississippi, entitled "An act to incorporate the Georgia Pacific Railway Company and to define and enlarge its powers in the State of Mississippi," approved Feb. 15th, 1882. And defendant says that said Georgia Pacific Railway Company was organized and chartered with the view of building a different road from the road which said City of Columbus was authorized to aid as aforesaid, to-wit: A railroad from Atlanta, in the State of

Georgia, to the Mississippi river, either by way of Columbus or Aberdeen. And defendant says that the railroad, which said Georgia Pacific Railway Company was so organized and chartered and authorized by its charter to build, did not pass through the counties of Lowndes in the State of Mississippi, and Sanford, Fayette, Walker, Winston, Laurence and Morgan in the State of Alabama, nor have its termini at Decatur, Alabama, and Columbus, Mississippi.

And defendant says that said issuance and delivery of the bonds and coupons which form the basis of this suit were so issued and delivered to said Georgia Pacific Railway Company without any Legislative authority, requiring that two-thirds of the qualified voters of said city should assent thereto at a special or regular election to be
21 held therein. And this defendant is ready to verify.

Sixth. For further plea in this behalf defendant says that the bonds and coupons which form the basis of this suit, were issued and delivered to the Georgia Pacific Railway Company by the authorities of the City of Columbus, without any Legislative authority requiring the assent thereto of two-thirds of the qualified voters of said city at a regular or special election to be held therein. And this defendant is ready to verify.

Seventh. And for further plea in this behalf defendant says that the bonds and coupons which form the basis of this suit were issued and delivered to the Georgia Pacific Railway Company by the authorities of the City of Columbus, without the same having been assented to by two-thirds of the qualified voters of said city at a regular or special election held therein, all of which plaintiffs had notice.

And this defendant is ready to verify.

Eight: And for further plea in this behalf defendant says that under an act of the Legislature of the State of Mississippi, entitled "An act supplemental to an act entitled

'An act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama to commence, build and operate a railroad or way, from Columbus, Mississippi, to the State line of Alabama,' approved April 6, 1871," approved Feb 1, 1872, authority was given to the City of Columbus to subscribe in aid of the said Columbus, Fayette & Decatur Railroad Company, that acting under said authority said city on to-wit, the 8th day of May, 1872, voted to
22 donate to said Columbus, Fayette & Decatur Railroad Company $100,000.00 of its bonds. That afterwards, and before any of the bonds or coupons which are the basis of this suit, or which were authorized by said vote were issued, said Columbus, Fayette & Decatur Railroad Company became and was, without the consent of the defendant, merged into another and different corporation, organized for the purpose and with the view of building a railroad in a different direction with different termini and through a different country from that which had been fixed by the charter of said Columbus, Fayette & Decatur Railroad Company, and which was by its charter authorized to leave Columbus entirely off its line of road, of all which plaintiffs had notice by the provisions of an act of the Legislature of the State of Mississippi entitled "An act to incorporate the Georgia Pacific Railroad Company and to define and enlarge its powers in the State of Mississippi," approved Feb. 15, 1882, and the act pleaded in said declaration entitled "An act to ratify and confirm the several acts of consolidation, merger and sale of certain Railroad Companies in this State into one Company to be known as the Georgia Pacific Railway Company," approved March 4, 1882. And defendant says that none of the bonds or coupons which form the basis of this suit were issued until long after the passage of both said acts of the Legislature, to-wit: before the 3rd day of October, 1882.

And this defendant is ready to verify.

Ninth. And for further plea in this behalf defendant says that the qualified voters of the City of Columbus, at an election held therein, on the 8th day of May,
23 1872, in said city voted to donate to the Columbus, Fayette & Decatur Railroad Company, its bonds to the amount of one hundred thousand dollars, and that the only authority which was vested in said voters was to vote as to whether they would subscribe in aid of said railroad company. Of all which plaintiffs had notice. And this defendant is ready to verify.

Tenth. And for further plea in this behalf defendant says that the only Legislative authority granted to this defendant to aid the Columbus, Fayette & Decatur Railroad Company was, that conferred by an act of the Legislature of the State of Mississippi, approved Feb. 1st, 1872, entitled "An act supplemental to an act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama," approved April 6th, 1871; and that the authorities of the City of Columbus did not exercise the power therein conferred, but submitted to the voters whether or not this defendant should make a donation of one hundred thousand dollars to said Columbus, Fayette & Decatur Railroad Company; and defendant says that said act of the Legislature and vote so taken was the only authority for the issuance of the bonds and coupons sued on. Of all which the plaintiffs had notice. And this defendant is ready to verify.

Eleventh. And for further plea in this behalf defendant says that by the act of the Legislature of Mississippi, approved Feb. 1st, 1872, aforesaid, said City of Columbus was authorized to subscribe to the capital stock of the Columbus, Fayette & Decatur Railroad Company and had no power to issue bonds or coupons as a do-
24 nation, and defendant says that the bonds and coupons which are the basis of this

suit, was authorized by a vote of the qualified voters of Columbus as a donation and not as a subscription to the capital stock. Of all which the plaintiffs had notice. And this defendant is ready to verify.

Twelfth. And for further plea in this behalf defendant says that the authorities of the City of Columbus issued and delivered the bonds and coupons, which form the basis of this suit, to the Georgia Pacific Railway Company, without any authority other than the vote of the qualified voters of said city to make a donation to the Columbus, Fayette & Decatur Railroad Company, which vote was taken more than ten years before said bonds and coupons were issued. Of which plaintiffs had notice. And this defendant is ready to verify.

Arnold & Evans,
Wm. Baldwin,
Atty's for Deft.

Thirteenth. And for further plea in this behalf defendants say that under the act of the Legislature entitled "An act supplemental to an Act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama, approved April 6th, 1871," approved February 1, 1872, authority was given to the City of Columbus to subscribe in aid of the said Columbus, Fayette & Decatur Railroad Company, that acting under said authority, said city, on to-
25 wit, the 8th day of May, 1872, voted in favor of "Subscription" to said Columbus, Fayette & Decatur Railroad Company, of $100,000.00 dollars of its bonds. That afterwards and before any of the bonds or coupons which are the basis of this suit, or which were authorized by said vote were issued, said Columbus, Fayette and Decatur Railroad Company became and was without the consent of this defendant, merged into an-

other and different corporation, organized for the purpose and with the view of building a railroad in a different direction, with different termini and through a different country from that which had been fixed by the charter of said Columbus, Fayette & Decatur Railroad Company; and which by its charter was authorized to leave Columbus entirely off its line of road, of which plaintiffs had notice by the provisions of an act of the Legislature of the State of Mississippi, entitled "An act to incorporate the Georgia Pacific Railway Company and to define and enlarge its powers in the State of Mississippi," approved Feb. 15, 1882, and the act of the Legislature of the State of Mississippi, pleaded in said declaration, entitled "An act to ratify and confirm the several acts of consolidation, merger and sale of certain railroad companies in this State into one company to be known as the Georgia Pacific Railway Company," approved March 4, 1882. And defendant says that none of the bonds or coupons which form the basis of this suit were issued until long after the passage of both said acts of the Legislature. And this defendant is ready to verify.

Fourteenth. And for further plea in this behalf defendant says, that the qualified voters of the
26 City of Columbus at an election held therein on the 8th day of May, 1872, voted in favor of "Subscription" of one hundred thousand dollars to the Columbus, Fayette & Decatur Railroad Company, and defendant says that said sum was not voted by said voters as a "Donation," and that the only authority of the municipal authorities for the issuance of the bonds and coupons sued on, was the vote aforesaid, and defendant says that said bonds were not issued by said authorities in payment of the "Subscription" so voted, but as a donation, of all which plaintiffs had notice. And this defendant is ready to verify.

Fifteenth. And for further plea in this behalf defendant says that the only Legislative authority granted to this defendant to aid the Columbus, Fayette & Decatur Railroad

Company was that conferred by an act of the Legislature of Mississippi, approved February 1, 1872, entitled "An act supplemental to an act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama," approved April 6, 1871. And that under said authority therein conferred the qualified voters of said city did on the 8th day of May, 1872, vote in favor of "Subscription" of one hundred thousand dollars payable in the bonds of said city, to the capital stock of said Columbus, Fayette & Decatur Railroad Company.

And defendant says that the vote so taken, under the power conferred as aforesaid, was the only authority for the issuance of the bonds or coupons sued on.
27 Of all which plaintiffs had notice. And this defendant is ready to verify.

Arnold & Evans,
Wm. Baldwin,
Att'ys for Deft.

Plea.

The United States of America.
Eastern Division of the Northern District of Mississippi. } Circuit Court.

JOHN M. DENNISON, and others,
265.] vs
THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS.

And now comes the defendant, The Mayor and City Council of the City of Columbus (a municipal corporation) by its attorneys and defends the wrongs and injuries, when, &c., and says, that the said supposed bonds and coupons in the declaration set forth are not the acts or deeds of this defendant. And of this defendant puts itself upon the country.

The State of Mississippi, Lowndes County. } Personally appeared before me H. D. Foote, a Justice of the Peace of said county and ex-officio Notary Public, A. J. McDowell, Mayor of the city of Columbus, Mississippi, who being duly sworn, deposes and says that the matters and things in the above and foregoing plea are true and correct as therein stated.

A. J. McDowell,
Mayor City of Columbus.

Sworn to and subscribed before me, H. D. Foote, J. P., and ex-officio Notary Public, this the 24th day of May, 1894. (L. S.)

H. D. Foote,
J. P. and ex-officio Notary Public.

Articles of Incorporation.

The State of Alabama, County of Fayette.

28 This is to certify that in accordance with the provisions of an act entitled "An act to provide for the creation and regulation of Railroad Companies in the State of Alabama," approved Dec. 29th, 1868.

We, Harrison Hale, J. T. Smith, I. B. Tyler, J. C. Robertson, John C. Moore and W. H. Kennedy, have this day formed ourselves into a company, which shall be known under the name and style of "The Columbus, Fayette & Decatur Railroad Company," for the purpose of building a railroad, one terminus of which shall be at Columbus, Mississippi, and the other at Decatur, Alabama. Said railroad shall pass through the counties of Lowndes, in Mississippi, and through the counties of Sanford, Fayette, Walker, Winston, Laurence and Morgan, in Alabama.

We further certify that the capital stock of said company shall be one million of dollars, in shares of fifty dollars each.

Given under our hands and seals, this 7th day of February, A. D., 1871.

Harrison Hale, (seal.)
J. T. Smith, (seal.)
I. B. Tyler, (seal.)
J. C. Robertson, (seal.)
John C. Moore, (seal.)
W. H. Kennedy, (seal.)

State of Alabama, Fayette County.

Personally appeared before me, Joseph S. Clifton, an acting Justice of the Peace in and for said county, Harrison Hale, J. T. Smith, I. B. Taylor, John C. Robertson, and John C. Moore, who acknowl-
29 edged that they signed and sealed the foregoing certificate on the day and year aforesaid for the purposes therein mentioned.

In witness whereof I hereunto set my hand and private seal, this 7th day of Feb., 1871.

J. S. Clifton, (seal.) J. P.

The State of Alabama, Fayette County.

I, John B. Burris, Clerk of the Circuit Court in and for said county, hereby certify that Joseph S. Clifton is one of the legal Justices of the Peace in and for said county, and full faith and credit are due his official acts in the premises.

In witness whereof I hereunto set my hand and private seal, this 7th day of Feb., 1871.

John B. Burris, (seal.)
Clk. Circuit Ct.

Filed in office and recorded Feb. 16, 1871.

J. J. Parker,
Secretary of State.

I hereby certify that the above and foregoing is an exact transcript of the record in my office in the matter of the Columbus, Fayette & Decatur Railroad Company.

W. W. Screws,
Sec. of State.

Filed April 3rd, 1894.
G. R. Hill, Clerk.

[And on the 3rd day of April, 1894, plaint-
30 iffs filed their demurrer to defendant's pleas in words and figures following, viz:]

Plaintiff's Demurrer to Defendant's Pleas, 3rd to 15th, both inclusive.

Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi.

265. John M. Dennison, *et al*, vs. The Mayor and City Council of Columbus.

Now comes the plaintiffs by their attorneys and demur to the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 15th, special pleas of defendant separately and jointly, and say they are each insufficient in law and assign the following causes of demurrer.

1st. Said third plea is no defence.

2nd. It does not show that said Georgia Pacific Railroad did not include or could not have included the proposed line of said Columbus, Fayette & Decatur Railroad, or a part thereof.

3rd. It does not show in what respect said Georgia Pacific Railway Company was different from said Columbus, Fayette & Decatur Railroad Company, or that it did not or could not build the line chartered for said Columbus, Fayette

& Decatur Railroad Company, or that the conditions on which said bonds were voted were not or could not have been complied with.

4th. To said 4th plea plaintiffs demur for the reasons above set forth to said 3rd plea.

5th. To said 5th plea plaintiffs demur for the reasons above set forth to said 3rd plea.

6th. To said 6th plea plaintiffs demur for the reasons set forth to said 3rd plea.

7th. To said 7th plea plaintiffs demur for the reasons above set forth to said 3rd plea. And for the
31. further reason that it contradicts the recital in the bonds.

8th. To said 8th plea plaintiffs demur for the reasons above set forth to said 3rd and 7th pleas, and for the further reason that it is not in said plea alleged that said Georgia Pacific Railroad was in fact built so as to leave Columbus off its line of road.

9th. To said 9th plea plaintiffs demur because it is no defense to this suit, but states an erroneous legal conclusion.

10th. To said 10th plea plaintiffs demur for the reason that it states an erroneous legal conclusion, and besides is no defense to this suit.

11th. To said 11th plea plaintiffs demur because it states an erroneous legal conclusion and is no defense to this suit.

12th. To said 12th plea plaintiffs demur because it states an erroneous legul conclusion and is no defense.

13th. To said 13th plea plaintiffs demur because it states an erroneous legal conclusion and is no defense.

14th. To said 14th plea plaintiffs demur because it states an erroneous legal conclusion and is no defense to this suit.

15th. To said 15th plea, plaintiffs demur because it states an erroneous legal conclusion, contradicts the recital in the bonds, and is no defense to this suit.

16th. Plaintiffs demur to the 12th plea also because it does not show the conditions under which said bonds were voted, or that they were issued more than ten years after a cause of action accrued, or after said conditions were complied with.

17th. The declaration shows that plaint-
82 tiffs are innocent purchasers for value without notice, and none of said thirteen special pleas are any defense against these plaintiffs. Wherefore, &c.

Joseph Packard, Jr.,
Critz & Beckett,
Attorneys for Plaintiffs.

Endorsed:
Filed April 3rd, 1894.
G. R. Hill, Clerk.

(And on the said 3rd day of April, 1894,
83 the parties by attorneys filed their agreement in words and figures following:

Agreement of Parties Filed April 3rd.

The United States of America.
Eastern Division of the Northern District of Mississippi. } Circuit Court.

JOHN M. DENNISON, and others,
265.] vs
THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS.

It being the desire of all parties to this suit that all legal questions which are involved touching the validity of the bonds and coupons which are the basis of this suit, may

at one and the same time be presented to and considered by his Honor, Henry C. Niles, Judge of said Court.

Now in order that the same may be fully presented. It is agreed and stipulated that the pleas prepared by defendant (but not filed) and the demurrers thereto prepared by plaintiffs may be submitted at the same time that the demurrer to the declaration is submitted, and that such submission shall in no wise affect the demurrer to the declaration. That said pleas numbered from one to fifteen, both inclusive and the sworn plea of *non est factum*, shall be in all things taken and considered as filed by consent of parties and leave of the Court, without regard to the order of pleading or technical objections to said pleas or the order or manner of pleading the same, and without any prejudice to the demurrer to said declaration—it being the purpose of all parties to submit the validity or invalidity of said bonds by reason of any of the matters set forth in said
34 declaration or pleas and the demurrers thereto at one and the same time for the consideration of said Judge.

And it is agreed that the charter of the Columbus, Fayette & Decatur Railroad Company in the State of Alabama, nor any statutes referred to in said pleadings, need be certified but the copy of said charter attached to said pleas, and the statutes referred to in any of the pleadings, a copy of which is produced in published form, may be taken as true and correct.

It is further agreed that the amendment of the declaration made by plaintiffs this day by inserting the words "authorizing a subscription by way of donation" in said declaration, shall not render it necessary to reform any of said pleas, or make them objectionable as repeating matter now set forth, in the declaration, or for any reason growing out

of said amendment.

Critz & Beckett,
Attorneys for Plaintiffs.
Wm. Baldwin,
and Arnold & Evans,
For Deft.

Endorsed:
Filed April 3rd, 1894.
G. R. Hill, Clerk.

Opinion of the Court.

Circuit Court of the United States,
Eastern Division of the Northern District
of Mississippi.

John M. Dennison, *et al*,
265. vs.
The Mayor and City Council
of Columbus, Mississippi.

This is a suit on overdue coupons for interest on bonds issued by the defendant to the Columbus, Fayette & Decatur Railroad Company, and delivered to the Georgia Pacific Railway Company, into which the first company and several others were consolidated.

The main points relied on as defenses are that the bonds were voted as a donation when the act under which they were voted only authorized a subscription to the capital stock, and that the consolidated Company was authorized to build a different railroad from that originally chartered.

The act approved Feb. 1, 1872 (see acts 1872, 297) gave the city authorities power to subscribe to aid in the construction of the Columbus, Fayette & Decatur Railroad Company, and to issue its bonds to the amount of said subscription.

No provision is anywhere made for an exchange of bonds for stock, and stock is no where mentioned in the act.

The act ratifying the consolidation (acts 1882, 836, Sec. 2) provides that "the donation of $100,000.00 in its bonds heretofore agreed to be made by the town of Columbus, to the Columbus, Fayette & Decatur Railroad Company, but which have not yet been paid over, be and are hereby declared to be payable to the said Georgia Pacific Railway Company." This is a Legislative construction at least, that a donation was authorized which in such cases
36 is entitled to great respect and will frequently amount to a legislative ratification. Pompton vs. Cooper Union, 101 U. S., 196.

In 1884 an act was passed amending the charter of the city of Columbus, in which it was authorized to levy and collect a special tax to pay the interest on these bonds, and to provide a sinking fund for the ultimate redemption of the principal.

The declaration shows that the interest has been paid for eleven years, since 1882. Here is a ratification by the Legislature in authorizing the bonds to be issued as a donation and taxation to pay them. A ratification by the city authorities, in issuing them as a donation and levying the taxes, and a ratification by the people in the continued payment of the taxes. It is difficult to conceive a stronger case of ratification if that were necessary.

The bonds were voted as a donation by the constitutional majority of two-thirds of the qualified voters, as recited in the face of the bonds themselves, and this only barrier against Legislative power being removed, the Legislature clearly had the right to ratify.

Grenada County vs. Brogden, 112 U. S., 261.

Katzenberger vs. Aberdeen, 121 U. S., 178.

It is next objected that by the consolidation a different

road was authorized to be built, and that the consolidated company had authority to leave Columbus off its line entirely and to build by way of Aberdeen.

It is not alleged that the consolidated Company was deprived of the right to build the road for which the bonds were voted or that it actually did build by way of Aberdeen.

37 The rule is that if bonds are voted to a railroad company which at that time is authorized to consolidate with other railroads, then the bonds may properly be delivered to the consolidated company. This principal is announced and the authorities reviewed in Livingston &c., vs. The First National Bank, 128, U. S., 102. There was a general act for the creation of railroads passed by the Legislature of Alabama, on December 29th, 1868. (See acts of Alabama, 1868, 462. By the 21st section of this act railroad companies were authorized to consolidate on certain conditions. By the 23rd section all the property and *choses in action* of each constituent company was transferred to the consolidated company.

By the Mississippi act this Columbus, Fayette & Decatur Railroad Company, which was incorporated under this general act for Alabama was granted "All the privileges, rights and immunities" conferred by the Alabama act. See acts of Miss., 1871, 187–8.

Hence the companies were authorized to consolidate and the bonds, or rights to the bonds which is a *chose in action*, was transferred to the consolidated company, unless this right was cut off by the allegation that the consolidated company had an option to build a different road by way of Aberdeen. The answer to this is, that the city authorities were only required to issue the bonds "when the terms of subscription are complied with." [See acts Miss., 1872, 298.]

On their faces the bonds are payable to the Columbus, Fayette & Decatur Railroad Company. They were authorized to be delivered to the Georgia Pacific Railway Com-

pany, the consolidated company, under the same
38 limitations and restrictions that they were or would have become payable to the Columbus, Fayette & Decatur Railroad Company. See acts Miss., 1882, 836.

The city authorities of Columbus, Miss., were the tribunal to determine when these conditions were complied with, and issue and deliver the bonds.

They did issue and deliver the bonds with proper recitals and they are now estopped as against innocent purchasers from alleging that they acted wrongfully.

Block vs. Commissioners, 99th U. S. 686.

Commissioners vs. January, 94th U. S, 202.

Commissioners vs. Clark, 94th U. S., 278.

Brooklyn vs. Insurance Co., 99th U. S., 362.

Morgan vs. Commissioners 2nd Black, 722.

For these reasons I think the demurrer to the declaration should be overruled and the demurrers to the special pleas (from the third to the fifteenth, inclusive) should be sustained, and judgments can be entered accordingly.

H. C. Niles, Judge.

(And thereupon on the 3rd day of April,
39 1894, a day of the April term, 1894, of said Court, orders of said Court were entered upon the minutes thereof in these words and figures, viz:]

April 3rd, 1894.

Order Overruling Demurrer to Declaration.

John M. Dennison, *et al*,
265. vs.
The Mayor & City Council of Columbus, Miss.

Came the parties by attorneys, and thereupon came up

to be heard, and was by the Court heard, defendant's demurrer to plaintiff's declaration in this cause, and after argument of counsel, pro and con, and due consideration thereof by the Court.

It is considered and so ordered by the Court, that said demurrer be and the same is hereby overruled, and leave to defendant to plead over, whereupon defendant filed its pleas in open Court.

April 3rd, 1894.

Order Sustaining Demurrers to Pleas—3 to 15 Inclusive.

John M. Dennison, *et al*,
265 vs.
The Mayor & City Council of Columbus, Mississippi.

Came the parties by their attorneys, and thereupon came up to be heard, and was by the Court heard, plaintiffs' demurrers to defendants' special pleas, and after argument of counsel pro and con, and due consideration thereof by the Court.

It is considered and so ordered by the Court, that said demurrer to said special pleas (from the third to the fifteenth inclusive) be and the same are hereby sustained, and leave given to plead over.

[On the 16th day of October, 1894, an
40 agreement of said parties was filed by counsel in the words and figures following, viz:]

Agreement of Parties of Oct. 16th, 1894.

The United States of America,
Eastern Division of the Northern District of Mississippi. } Circuit Court of the United States.

John M. Dennison, *et al*,
265. vs.
The Mayor & City Council
Columbus, Mississippi.

In this cause, it having been heretofore agreed that the acts of the General Assembly of Alabama, the acts of the Legislature of Mississippi and the charter in Alabama of the Columbus, Fayette & Decatur Railroad Company, need not be technically pleaded, but might be set up in the pleading by referring to them by their title and date, and that certified copies need not be introduced in evidence, but that any published copy might be used instead of certified copies.

Now further to facilitate the trial of said cause, it is agreed that the copy of the act of the General Assembly of Alabama, entitled "An act to provide for the creation and regulation of railroad companies in the State of Alabama," approved December 28th, 1868, published and quoted in the published acts of the Legislature of Mississippi of 1870, on pages 234, *et sequitur*, or any other published copy of said act may be used on said trial as a true copy of said act, with all the effect of a copy duly authenticated according to law.

That the copy of Articles of Incorporation
41 of the Columbus, Fayette & Decatur Railroad Company, signed by Harrison Hale, and others, as published in a book entitled "Charter, Rights and Mortgages of the Georgia Pacific Railway Company," on pages 53 and 54, or any other published copy of said articles, may be used on said trial as a true copy of the Charter of said Columbus, Fayette & Decatur Railroad Company, with all the effect of a copy duly authenticated according to law.

That as to all such other acts of the General Assembly of Alabama and the Legislature of the State of Mississippi, as shall be offered, published copies may be used with all the effect of copies duly authenticated.

The following facts are admitted and may be considered

as duly proved, subject to objections for immateriality, incompetency, and as not constituting a defense to this action. That the vote by the voters of Columbus, which is claimed as the authority for the issuance of the bonds set out in the declaration was had on the 8th day of May, A. D. 1872. That none of said bonds were issued prior to the 3rd day of October, 1882.

That the termini of the Georgia Pacific Railway is Greenville, Miss., which is situated on the Mississippi river almost due west of Columbus, which is in the county of Lowndes and about ten (10) miles from the eastern boundary of the State.

The Georgia Pacific Railway runs from Greenville, Mississippi, through Columbus, Mississippi, to Birmingham, Alabama, which is almost due east of Columbus, Mississippi, and about 120 miles therefrom. From there it continues about due east to Atlanta, which is in the State of Georgia.

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The town of Decatur is in Alabama, and is situated on the Tennessee river in Morgan County, about 140 miles northeast of Columbus, and about 85 miles nearly due north of Birmingham, at which point the Louisville & Nashville and the Memphis & Charleston Railroads cross each other, and did in 1872. The Georgia Pacific Railway runs east and west through the southern portions of Lamar (formerly Sanford), Fayette and Walker counties, Alabama, but does not touch Winston, Laurence or Morgan counties, Alabama, and does not touch the Memphis & Charleston Railroad, or any point on the Tennessee river. An air line from Columbus, Mississippi, to Decatur, Alabama, would extend from southwest to northeast through Lamar county, and through Fayette county, and would run through the northwest corner of Walker county, through Winston dividing it almost in half from Southwest to northeast, through the southeast corner of Laurence county, and through Morgan county to Decatur.

The town of Aberdeen is in Monroe county, Mississippi, and about 25 miles north of Columbus, Mississippi.

An authentic map may be used to show the situations of these places and the direction of said railroad.

It is understood, however, and distinctly,
43 agreed that the purpose of this agreement is to avoid the cost and trouble of summoning witnesses to prove undisputed facts, but is not to be construed as admitting that such facts constitute a defense, or that they are material or relevant, and the facts and testimony herein agreed on shall be received just as if established by other competent proof and subject to all proper exceptions for materiality, relevancy, or sufficiency to constitute a defence.

Critz & Beckett,
Attorneys for Plaintiffs.

Endorsed:

Filed Oct. 16, 1894.
G. R. Hill, Clerk.

(And on the 18th day of October, 1894, a day of the October Term of said Court, an order of said Court was made and entered on the minutes in the following words and figures:)

Order of Court as to Agreements of Counsel.

Circuit Court of the United States,
Eastern Division of the Northern District
of Mississippi.

John M. Dennison, *et al*,
265. vs.
The Mayor and City Council
of Columbus, Mississippi.

It is ordered that the agreements of counsel filed in this cause on the 3rd day of April, A. D., 1894, and on the 16th day of October, 1894, be recorded, and that they be and are hereby made a part of the record in this cause. Ordered this October 18th, 1894.

H. C. Niles,
Judge.

Endorsed:

Filed Oct., 1894.
G. R. Hill, Clerk.

(And on said 18th day of October, 1894,
44 plaintiffs filed their demurrer to defendant's second plea or plea of *nil debit* in the words and figures following, viz.:)

Demurrer to Second Plea or Plea Nil Debit.

Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi.

JOHN M. DENNISON, *et al*,
265.] vs.
THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS.

Now come the plaintiffs by attorneys and demur to the second plea or plea of *nil debit*, and say the same is not sufficient in law, because it is no defence to the declaration.

Critz & Beckett,
Attys. for Plaintiffs.

Endorsed:

Filed Oct. 18th, 1894.
G. R. Hill, Clerk.

(Upon which demurrer on the said 18th day of October, 1894, an order was made and entered on said minutes in the following words and figures:)

Order of Court Sustaining Demurrer to 2nd Plea.

October 18th, 1894.

John M. Dennison, *et al*,
265. vs.
The Mayor & City Council of Columbus, Miss.

This day came the parties by their attorneys and thereupon came up to be heard and was by the Court heard plaintiff's demurrer to defendant's second plea, and after argument of counsel pro and con, and due consideration by the Court. It is considered by the court that said demurrer be sustained.

(And thereupon on the trial of said cause
45 on said 18th day of October, 1894, a day of the regular October Term, 1894, of said Court. The Court charged the jury in the words and figures following, viz:)

Courts Charge to Jury.

Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi.

John M. Dennison, *et al*,
265 vs.
The Mayor & City Council of Columbus, Mississippi.

The Court instructs the jury to find for the plaintiffs for the amount sued for with interest from February 1st, 1894, at the rate of 6 per cent. per annum.

Endorsed:

Filed Oct. 3rd, 1894.

G. R. Hill, Clerk.

(Whereupon on said 18th day of October, 1894, a judgment was rendered and entered on the minutes of said court in the words and figures to-wit:)

April 18th, 1894.

Judgment of Court.

John M. Dennison, *et al*,
265 vs.
The Mayor & City Council of Columbus, Mississippi.

This day came the parties again by their attorneys, and thereupon came also a jury of good and lawful men to-wit: J. M. Charping and eleven others, who were duly elected, tried and sworn well and truly to try the issue joined between the parties, upon their oaths do say they find for the plaintiffs and assess their damages at the sum of three
46 thousand and sixty-four dollars and ninety-five cents. It is therefore considered by the Court that plaintiffs recover of defendant the damages aforesaid by the jury assessed, with 6 per cent interest per annum thereon from this date together with the costs in this behalf expended.

(And thereupon on said 18th day of Octo-
47 ber, 1894, defendant tendered its Bill of Exceptions which was signed and sealed by the Conrt in open Court, in the words and figures following, to-wit:)

Bill of Exceptions.

The United States of America. } Circuit Court
Eastern Division of the Northern } of the
District of Mississippi. } United States.

John M. Dennison, James G. Wilson, and Frank T. Redwood,
265 vs.
The Mayor and City Council of Columbus, Mississippi. } Bill of Exceptions

Be it remembered that on this, the 18th day of October, A. D., 1894, it being a day in the regular October Term, 1894, of the said Court, begun and holden in the town of Aberdeen in and for the Eastern Division of the Northern District of Mississippi, before his Honor Henry C. Niles, District Judge presiding, the above entitled cause came on to be tried before the said judge and a jury composed of J. M. Charping and eleven others, who had been duly elected, empannelled and sworn, as provided by law. And thereupon the pleading having been read to the jury, plaintiffs demurrer to defendants' second plea of "*nil debit*" having been sustained, the plaintiff to maintain and prove the issue on their part offered in evidence the bonds and coupons sued on, which bonds and coupons were in words and figures as follows, (said bonds and coupons being similar in all respects except as to their number, they being numbered from (1) one to (98) ninety-eight inclusive.

$1000. No. 1.

48 United States of America, State of Mississippi, City of Columbus.

Twenty years after date, The City of Columbus, in the County of Lowndes and State of Mississippi, promises to pay to the Columbus, Fayette & Decatur Railroad Company or bearer, one thousand dollars with interest thereon at 6 per cent per annum from February 1, 1882, said interest payable semi-annually at the agency of said City of Columbus in the City of New York, State of New York, or at the office of the Secretary and Treasurer of said City of Columbus, as represented by the coupons hereto attached, at which said places of payment or either of them, this bond is also made payable at maturity. This bond being one of one hundred

of the same denomination numbered from 1 to 100 consecutively and being in part of a donation of one hundred thousand dollars to The Columbus, Fayette & Decatur Railroad Company authorized by a vote of two-thirds of the qualified voters of said City of Columbus at an election held in said City on the 8th day of May, 1872, and in pursuance of an act of the Legislature of the State of Mississippi, entitled "An act supplemental to an act entitled an Act to authorize the Columbus, Fayette & Decatur Railroad Company to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama. Approved April 6th, 1871," Approved February 1st, 1872.

Witness the signature of the Mayor and Secretary and Treasurer of said City of Columbus, together with the seal of the said City of Columbus, this the 1st day of February, A. D., 1882

C. E. Dancy.

Wm. R. Cannon, Mayor.

49. [L. S.] Secretary and Treasurer.

Coupon.

Coupon.

$30.00. The City of Columbus, in the County of Lowndes, State of Mississippi, will pay to bearer, at the agency of the said City of Columbus, in the City of New York in the State of New York, or at the office of the Secretary and Treasurer of said City of Columbus on the 1st day of February, 1894, thirty dollars, being semi-annual interest on Bond No. 1. C. E. Dancy,

Mayor.

Protest.

United States of America,
The State of Mississippi.
County of Lowndes.

By this public instrument be it known that on this 3rd day of February, 1894, at the request of the First National Bank, of Columbus, Miss., the holder of the original coupon of which a true copy is below written, I, E. P. Richards, Clerk of the Chancery Court of said County and ex-officio Notary Public, residing in the City of Columbus, qualified according to law. I went to the office of the Secretary and Treasurer of the City of Columbus, and then and there I presented the said coupon to S. W. Baker, Secretary and Treasurer, and demanded payment thereof which was refused, the said S. W. Baker, Secretary and Treasurer, stating that he was authorized by the Mayor and City Council not to pay the interest coupon when presented for payment, thereupon, I, the said Clerk of the Chancery Court of said county and ex-officio Notary Public at the request aforesaid, do hereby solemnly and publicly protest the said original coupon as well as against the drawer thereof as the acceptors, endorsers and all who may be concerned therein for all exchange, re-exchange, costs, charges, damages and interest suffered or to suffer for the non-payment, of said original Coupon, now due and protested.

Given under my hand and the seal of my office at Columbus, Mississippi, the day and year above mentioned.

[L. S.]

E. P. Richards, Chan. Clk.
and ex-officio Notary Public,
Lowndes County, Miss.

Copy.

$30.00.

The City of Columbus, County of Lowndes, State of Mississippi, will pay the bearer at the agency of the said City of Columbus in the City of New York, in the State of New York, or at the office of the Secretary and Treasurer of the said City of Columbus, on the 1st day of April, 1894, thirty

dollars being semi-annual interest on Bond No. 1.

C. E. Dancy,
Mayor.

W. P. Pope's Testimony.

The Plaintiff then introduced William P. Pope who being duly sworn testified as follows:

I was a citizen and resident of Columbus, Mississippi for 25 years, I was familiar with the signature of C. E. Dancy, Mayor of Columbus, and of William R. Cannon, Secretary and Treasurer of Columbus, on February 1st, 1882.

I have examined the bonds sued on in this case and from my knowledge of said signatures would say that the signature of C. E. Dancy is in the handwriting of said C. E. Dancy, and the signature of William R. Cannon, is in the handwriting of said Wm. R. Cannon. Said C. E. Dancy was Mayor and said Wm. R. Cannon was Secretary and Treasurer of Columbus, Mississippi on February 1st, 1882.

51 I was 21 years of age on the 23rd day of February, 1882. In referring to the signatures of Dancey and Cannon on the bonds, I refer to the bond itself and not the coupons.

And thereupon the plaintiffs closed the testimony on their part and "rested.."

H. M. Lanier's Testimony.

The defendant then introduced one Henry M. Lanier, who being duly sworn, testified as follows:

I am City Marshal of the City of Columbus, Mississippi, and have been such City Marshal for about — years. I was Marshal in the year 1882. I knew William R. Cannon intimately. He was Secretary and Treasurer of the City of Co-

lumbus. His office and mine were in the same building. I was tax collector and paid money as collected to Wm. R. Cannon, and was perfectly familiar with his hand-writing and signature. The signature on the bonds sued on in this case and now shown me (here the bonds sued on were handed to the witness) is *not* William R. Cannon's. He did not sign them. The actual date of the issuance of the bonds was October 4th, 1882; at that time Cannon was very sick. Was in a stupor and had been for some time before, and never recovered from it. He died October 13th, 1882.

Proceedings of City Council, Columbus.

Testimony of H. M. Lanier, continued.

The book I have in my hand is the minute-book of the Mayor and Aldermen of the City of Columbus. On page 325 is the record of the proceedings of the meeting held by them on October 3rd, 1882.

Here the record of said meeting was introduced and read in evidence as follows:

Regular meeting Board of Mayor & Aldermen, City Hall, Oct. 3rd, 1882.

Present—C. E. Dancy, Mayor; S. S. Franklin, P. Galvin, S. C. Munger, F. M. Leigh,
52 A. J. McDowell, Aldermen.

"On motion, H. M. Lanier was appointed Secretary *pro tem* in the absence of W. R. Cannon, who being sick and unable to attend:—

"The Mayor and Secretary are hereby directed to affix the seal of said City to forty (40) of the one thousand ($1000) dollar bonds, numbered from one (1) to forty (40) inclusive, and that they each sign the same in their official capacity and deliver them to the Columbus, Fayette & Decatur Railroad Company, or its successor, represented by Vice-President J. W. Johnston."

The witness continued:

The forty bonds so ordered issued, were the first of the bonds which were issued, and they were delivered to John W. Johnston, Vice-President of the Georgia Pacific Railway Company on October 4th, 1882, and the receipt of "The Georgia Pacific Railway Company by John W. Johnston, Vice-President," was taken.

H. M. Lanier's Cross Examination.

Upon cross-examination: This witness testified as follows:

The signature of C. E. Dancy to the bonds is genuine, and is in the hand-writing of C. E. Dancy; C. E. Dancy is in the Lunatic Asylum, and William R. Cannon is dead, died October 13th, 1882. The Secretary and Treasurer was not elected by the people, but was an appointee of the Mayor and Aldermen, and removable at their pleasure. The record of the meeting of said Mayor and Aldermen held on December 30th, 1881, provide for the printing of the bonds and coupons declared on, and prescribed their form, which form is the same as these introduced in evidence.

53 These records on page 332 contain the action of the Mayor and Aldermen at a meeting held on October 5th, 1882.

Thereupon said proceedings were read to the jury and were as follows:

Proceedings City Council.

Adjourned meeting Board of Mayor and Aldermen,

City Hall, Oct. 5th, 1882.

Present: C. E. Dancy, Mayor; S. S. Franklin, S. C. Munger, P. Galvin and A. J. McDowell, Aldermen.

The Board met pursuant to adjournment:

The report of the Mayor in reference to the signing and delivering of the forty bonds of $1000.00 each to the Georgia Pacific R. R. Company and depositing the remaining sixty, with The Columbus Insurance and Banking Company was received, adopted and ordered spread upon the minutes.

Columbus, Miss., Oct. 5th, 1882.

To the Board of Aldermen:

Gentlemen: In pursuance to the ordinance adopted by you on the 13th day of December, 1881, instructing me to sign the one hundred bonds of one thousand dollars each with the coupons attached, as a donation to the Columbus, Fayette & Decatur Railroad Company, and by ordinance of the 3rd of October, to deliver forty of the said bonds numbered one to forty inclusive, to said railroad company or their successors represented by J. W. Johnston, Vice-President, of the Georgia Pacific Railway Company. I have the honor to report that said bonds have been signed as aforesaid, and the seal of the city attached to them, and the forty numbered from one to forty inclusive have been delivered to the Georgia Pacific Railway Company, the lawful
54 successors to the Columbus, Fayette and Decatur Railroad Company, but before this was done, all the coupons which was attached to said bonds, for the interest purporting to be due Aug. 1st, 1882, being forty in number, were clipped from said bonds and they were delivered with only thirty-nine of said coupons attached to each of said bonds, numbered from one to forty inclusive aforesaid.

And said coupons are herewith placed at the disposal of this board, with recommendation that they be burned in the presence of this board. And I further report that in obedience to the ordinance of December 13th, 1881, I have this day deposited with the Columbus Insurance and Banking Company of this city, the remaining sixty bonds of the one hundred, each for one thousand dollars, with forty coupons attached to each bond, signed and sealed as aforesaid, the

receipts for which I herewith hand you, signed by W. H. Lee, Cashier of said Banking Institution, and respectfully suggest that it be spread upon the minutes of this board, to-wit:

The Columbus Insurance & Banking Co.,
Columbus, Miss., Oct. 5th, 1882.

No. 728. Received of C. E. Dancy, Mayor of Columbus 60 coupon bonds of the city of Columbus for $1000.00 each, numbered from 41 to 100 inclusive, with forty coupons attached to each bond as a special deposit, for safe keeping only.

Returnable to the City of Columbus upon the endorsement of the Board Mayor & Aldermen, on demand and presentation of this receipt properly indorsed and payment of fee.

W. H. Lee,
Cashier.

I also hand you the receipt of the Georgia Pacific Railroad Company, signed by John W. Johnston,
55 Vice-President of said road, for the forty bonds delivered to him by me, and suggest that it be incorporated in the minutes of this Board by pasting the same in its proper place upon the record of this Board.

Respectfully.
C. E. Dancy, Mayor.

Columbus, Miss., Oct. 4, 1882.

Received of C. E. Dancy, Mayor, and Wm. R. Cannon, Secretary and Treas. of the city aforesaid, forty twenty-year interest bearing bonds, for the sum of one thousand dollars each, with thirty-nine coupons attached to each bond for the six per cent interest on said bonds, payable semi-annually, numbered from one to forty inclusive, in full satisfaction to that extent of the first and second installment of the one hundred thousand dollars, donation by said City, to the Columbus, Fayette & Decatur R. R. Co. and the said Co. and

its successors having completed the first twenty miles of said road from Columbus, said bonds bearing date Feby. 1, 1882.

The Georgia Pacific Rail Road Company,
by John. W. Johnston,
Vice-President.

And thereupon the defendant offered and read in evidence without objection an agreement which was duly signed by the attorneys, as well for the plaintiffs as well as the defendant, and which had been duly filed with the papers in said cause, which agreement is in words and figures as follows, to-wit:

Agreements of Parties Filed Oct. 16, 1894.

The United States of America. Eastern Division of the Northern District of Mississippi. } Circuit Court of the United States.

56 265. John M. Dennison, *et al*, vs. The Mayor and City Council of Columbus, Mississippi.

In this cause it having been heretofore agreed that the acts of the General Assembly of Alabama, the acts of the Legislature of Mississippi, and the charter in Alabama, of the Columbus, Fayette & Decatur Railroad Company, need not be technically pleaded, but might be set up in the pleading by referring to them by their title and date. And that certified copies need not be introduced in evidence, but that any published copy might be used instead of certified copies.

Now further to facilitate the trial of said cause it is agreed, that the copy of the acts of the General Assembly of Alabama, entitled "An act to provide for the creation and regulation of railroad companies in the State of Alabama," approved December 29th, 1868, published and quoted in the

published acts of the Legislature of Mississippi, of 1870, on pgs. 234 *et sequitur*, or any other published copy of said act, may be used on said trial as a true copy of said act, with all the effect of a copy duly authenticated according to law.

That the copy of Articles of Incorporation of the Columbus, Fayette & Decatur Railroad Company, signed by Harrison Hale and others, as published in a book entitled "Charter, Rights and Mortgages of the Georgia Pacific Railway Company," on pages 53 & 54, or any other published copy of said Articles may be used on said trial as a true copy of the charter of said Columbus, Fayette & Decatur Railroad Company, with all the effect of a copy duly authenticated according to law.

That as to all such other acts of the General Assembly of Alabama and the Legislature of the State of Mississippi as shall be offered, published copies may be used with all the effect of copies duly authenticated.

57

The following facts are admitted, and may be considered as duly proved, subject to objections for immateriality, incompetency, and as not constituting a defence to this action.

That the vote by the voters of Columbus, which is claimed as the authority for the issuance of the bonds set out in the declaration, was had on the 8th day of May, A. D., 1872. That none of said bonds were issued prior to the 3rd day of October, 1882. That the termini of the Georgia Pacific Railway, is Greenville, Mississippi, which is situated on the Mississippi river almost due west of Columbus, which is in the County of Lowndes, and about ten miles from the eastern boundary of the State.

The Georgia Pacific Railway runs from Greenville, Mississippi, through Columbus, Mississippi, to Birmingham, Alabama, which is almost due east of Columbus, Mississippi, and about 120 miles therefrom. From there it contin-

ues almost due east to Atlanta, which is in the State of Georgia.

The town of Decatur is in Alabama, and is situated on the Tennessee river in Morgan county, about 140 miles north-east of Columbus, and about 85 miles nearly due north of Birmingham, at which point the Louisville & Nashville and the Memphis & Charleston Railroads cross each other, and did in 1872.

The Georgia Pacific Railway runs east and west, through the southern portions of Lamar (formerly Sanford), Fayette, and Walker counties, Alabama, but does not touch Winston, Laurence or Morgan counties, Alabama,
58 and does not touch the Memphis and Charleston Railroad or any point on the Tennessee river. A line from Columbus, Mississippi, to Decatur, Alabama, would extend from south-west to north-east through Lamar county and through Fayette county, and would run through the north-west corner of Walker county, through Winston, dividing almost in half from south-west to north-east, through the south-east corner of Laurence county, and through Morgan county to Decatur.

The town of Aberdeen is in Monroe county, Mississippi. and about 25 miles north of Columbus, Mississippi.

An authentic map may be used to show the situations of these places and the direction of said railroad. It is understood however, and distinctly agreed that the purpose of this agreement is to avoid the cost and trouble of summoning witnesses to prove undisputed facts, but is not to be construed as admitting that such facts constitute a defence, or that they are material or relevant, and the facts and testimony herein agreed on shall be received just as if established by other competent proof and subject to all proper exceptions for materiality, relevancy, or sufficiency to constitute a defence.

Arnold & Evans,
" Signed" Attys. for Defendant.
Critz & Beckett,
Attys. for Plaintiffs.

At the conclusion of the reading of said agreement, the plaintiff moved to exclude from the consideration of the jury all the facts so agreed upon, and set forth in said agreement,
59 upon the ground that such facts were each irrelevant and immaterial, and had no tendency to affect plaintiff's right to recover, which motion the Court sustained on the grounds set forth in said motion, and instructed the jury that they could not consider said facts or any of them, and that the same were excluded from their consideration. To which action, judgment and ruling of the Court in so excluding said facts, the defendant then and there, and as soon as said ruling was announced, and before the jury retired to consider of their verdict, excepted and tendered this its bill of exceptions, and prayed that the same might be signed, sealed and made a part of the record in said cause, which was accordingly done.

Act of Alabama to Create and Regulate R. R. Co's., Dec. 26, 1868.

And thereupon said defendant offered in evidence, a copy of an act of the General Assembly of the State of Alabama, approved December 29th, 1868, entitled "An act to provide for the erection and regulation of railroad companies in the State of Alabama," which copy so offered in evidence was admitted to be a true copy, and was agreed to be received as if it was certified and authenticated as provided by law which act was in words and figures as follows, to-wit:

"An act to provide for the creation and regulation of railroad companies in the State of Alabama."

Section 1. Be it enacted by the General Assembly of Alabama, That any number of natural persons, not less than five, may become a body corporate, with all the rights, powers and privileges conferred, and made subject to all the restrictions of this act.

Sec. 2. Be it further enacted, That any
60 number of persons aforesaid, associating to form a company for the purpose of constructing a railroad, shall, under their hands and seals, make a certificate which shall specify as follows:

1st. The name assumed by such company, and by which it shall be known.

2nd. The name of the place of the termini of said road, and the county or counties through which such road shall pass.

3rd. The amount of capital stock necessary to construct such road. Such certificate shall be acknowledged before a Justice of the Peace and certified by the Clerk of the Circuit Court, and shall be forwarded to the Secretary of State, who shall carefully preserve the same in his office, and a copy thereof duly certified by the Secretary of State, under the Great Seal of the State of Alabama, shall be evidence of the existence of such company.

Sec. 3. Be it further enacted, That when the foregoing provisions have been complied with, the persons named as corporators in said certificate, are hereby authorized to carry into effect the objects named in said certificate, in accordance with the provisions of this act, and they and their associates, successors, and assigns, in the name and style provided in such certificate, shall thereafter be deemed a body corporate with successors, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure, all such real and personal estate as may be necessary and convenient to carry into effect the objects for which
61 it was created; and such company shall possess all the powers and be subject to all the rules and restrictions provided by this act.

Sec. 4. Be it further enacted, That said corporation shall be authorized to construct and maintain a railroad,

with a single or double track with such side-tracks, turn-outs, offices, and depots, as they may deem necessary, between the points named in the certificate, commencing at or within, and extending to or into, any town, city or village, named as the place of the termini of such road, and construct branches from the main line to other towns, or places, within the limit of any county through which said road may pass.

Sec. 5. Be it further enacted, The capital stock of such company shall be divided into shares of fifty dollars each, and consist of such sum as may be named in the certificate. Such shares shall be regarded as personal property, and shall be subject to execution at law.

Sec. 6. Be it further enacted, An installment of five dollars on each share of stock shall be payable at the time, or at such other time, as said company may require, of making the subscription, and the residue thereof shall be paid in such installments, and at such times and places, and to such persons, as may be required by the directors of said company.

Sec. 7. Be it further enacted, If any installment of stock shall remain unpaid for sixty days after the time it may be required, whether such stock is held by assignee, transferee, or the original subscriber, the same may be collected by action at law, or the directors may sell
62 the stock so subscribed at public auction for the installments then due thereon, first giving thirty days' public notice of the time and place of sale in some newspaper in general circulation in the county where such delinquent stockholder resided at the time of making such subscription, or becoming such assignee, or transferee, or of his actual residence at the time of said sale; or if such stockholder reside out of the State, such publication shall be made in the county where the principal office of the Company is located; and if any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner, if the whole of said in-

stallments be not paid by such sale, the remainder shall be recoverable by an action of debt against the subscriber, assignee, or transferee.

Sec. 8. Be it further enacted, That whenever any railroad company heretofore incorporated, or created and incorporated under the provisions of this act shall, in the opinion of directors thereof, require an increased amount of capital stock, they shall, if authorized by the holders of a majority of the stock, file with the Auditor of State a certificate setting forth the amount of such desired increase, and thereafter such company shall be entitled to have such increased capital as is fixed by said certificate.

Sec. 9. Be it further enacted, That the persons named in said certificate of incorporation, or any three of them, shall be authorized to order books to be opened to receive subscription to the capital stock of said company, at such time or times and at such place or places, as they
63 deem expedient, after having given at least thirty day's notice in a newspaper published, or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books; and as soon as ten per centum on the capital stock shall be subscribed, they may give like notice for the stock-holders to meet at such time and place as they may designate, for the purpose of choosing seven directors, who shall continue in office until the time fixed for the annual election, and until their successors are chosen and qualified, at the time and place appointed.

Directors shall be chosen by ballot, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxies; each share shall entitle the owner to one vote. A plurality of votes shall be necessary for a choice, but after the first election of directors, no person shall vote on any share on which any installment is due and unpaid. The persons named in such certificate, or such of them as may be present, shall be inspectors of such election, and shall certify

what persons are elected directors, and appoint the time and place for holding their first meeting; a majority of said directors shall form a board, and be competent to fill vacancies in their Board, make by-laws, and transact all business of the corporation.

A new election shall be annually held for directors, at such time and place as the stock-holders, at their first meeting, shall determine, or as the by-laws of the corporation may require. And the directors chosen at any election shall, as soon thereafter as may be convenient, choose one of their number to be President, and shall appoint a Secretary and Treasurer of the corporation.

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The directors before entering on their duties, shall each take an oath or affirmation, faithfully to discharge their duties, and they shall, from time to time, make such dividends of the profits of said company as they may think proper.

Sec. 10. Be it further enacted, Such a corporation is authorized to enter upon any land for the purpose of examining and surveying its railroad line, and may appropriate so much thereof as may be deemed necessary for its railroads, including necessary side-tracks, depots, work-shops, and water stations, materials for construction, except timber, a right-of-way over adjacent lands, sufficient to enable said company to construct and repair its road, and a right to conduct water by acqueducts, and the right of making proper drains; but no appropriation of private property to use of any corporations provided for in this act shall be made, until full compensation therefor be first made in money, or secured by deposit of money to the owner or owners, irrespective of any benefit from any improvement proposed by such corporation, as shall be prescribed by law.

Sec. 11. Be it further enacted, That whenever any railroad company heretofore incorporated, or which may hereafter be incorporated, shall find it necessary for the purpose of avoiding annoyance to public travel, or dangerous or diffi-

cult curves or grades, or unsafe or unsubstantial grounds or foundations, or for any other reasonable causes, to change the location or grade of any portion of their road, whether heretofore made, or hereafter to be made, such
65 railroad companies shall be, and are hereby authorized to make such changes of grade and location, not departing from the general route prescribed in the certificate of such company. And for the purpose of making any such changes in the location and grade of such roads as aforesaid, such company shall have all the rights, powers and privileges to enter upon and take and appropriate such lands, and make surveys necessary to effect such changes and grades, upon the same terms, and be subject to the same obligations, rules and regulations as are prescribed by law, and shall also be liable in damages, when any have been caused by such change, to the owner or owners of the lands upon which said road was heretofore constructed, to be ascertained and paid or deposited as aforesaid, but no damages shall be allowed unless claimed within thirty days after actual notice of such intended change shall be given to such owner or owners, if residing on the premises, or notice by publication in some newspaper in general circulation in the county if non-resident.

Sec. 12. Be it further enacted, That if it shall be necessary in the location of any part of any railroad to occupy any road, street, alley, or public way, or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation, or public officer or public authority, owning or having charge thereof, and the railroad company, to agree upon the manner, and upon the terms and conditions upon which the same may be used or occu-
66 pied; and if said parties shall be unable to agree thereon, and it shall be necessary, in the judgment of the directors of such railroad company, to use or occupy such road, street, alley, or other public way, or ground, such company may appropriate so much of the same as may be necessary for the purpose of such road, in the same

manner and upon the same terms as is provided for the appropriation of the property of individuals, by the tenth section of this act.

Sec. 13. Be it further enacted, That such corporation may demand and receive, for the transportation of passengers on said road not exceeding three cents per mile, and for the transportation of property not exceeding five cents per ton a mile, when the same is transported a distance of thirty miles or more. And in case the same is transported a less distance than thirty miles, such reasonable rates as may be from time to time fixed by said company, as prescribed by law.

Sec. 14. Be it further enacted, That such company may have power to borrow money on the credit of the corporation, not exceeding its authorized capital stock, at a rate of interest not exceeding seven per cent per annum, and may execute bonds or promissory notes therefor, in sums of not less than one hundred dollars, and to secure the payment thereof may pledge the property and income of such company.

Sec. 15. Be it further enacted, That such company may acquire, by purchase or gift, any land in the vicinity of said road, or through which the same may pass, so
67 far as may be deemed convenient or necessary by said company, to secure the right of way, or such as may be granted to aid in the construction of said road, and the same to hold or convey in such manner as the directors may prescribe, and all deeds and conveyances made by such company, shall be signed by the president, under the seal of the corporation. And any existing railroad corporation may adopt the provisions of this act, and after such acceptance, all conflicting provisions of their respective charters shall be null and void.

Sec. 16. Be it further enacted, That it shall be lawful for such corporation, whenever it may be necessary for the

construction of such road, to cross any road or stream of water, to divert the same from its present location or bed; but the said corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

Sec. 17. Be it further enacted, That such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and change the same at pleasure, giving public notice in some newspaper of such establishment or change.

Sec. 18. Be it further enacted, That every company organized under this act, shall be required to erect, at all points where their roads shall cross any public road, at a sufficient elevation from such public road to admit of a free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the
68 proximity of the railroad, and warn persons of the necessity of looking out for the cars. And any company neglecting or refusing to erect such sign, shall be liable in damages for all injuries occurring to persons or property, from such neglect or refusal; and each railroad company shall be required to fence its roads with good substantial fence, under such rules as the county commissioners of the several counties through which the same may pass, shall prescribe.

Sec. 19. Be it further enacted, That each and every railroad incorporated under this act, shall annually, in the month of January, make a full report of the condition of its affairs to the Auditor of the State, showing the amount of the capital stock of such company, the gross amount of tolls or receipts, and incidental expenses, the amount of profits and the dividends made, with such other facts as may be necessary to a full statement of the affairs and conditions of such road. And the Auditor shall annually present an abstract copy of such reports to the General Assembly.

Sec. 20. Be it further enacted, That whenever the line

of any railroad company now existing, or which may hereafter organize under this act, shall cross any canal, or navigable water, the said company shall file with a Board of public works, where such crossing is proposed, the plan of bridge and other fixtures for crossing such canal or navigable water, designating the place of crossing. And if the board or acting commissioners thereof shall approve of such plan he shall notify such company in writing of such ap-
69 proval; but if such board or acting commissioners shall disapprove such plan, or fail to approve the same within twenty days from the filing thereof, then it shall be lawful for such company to apply to the Court of common pleas, and any judge thereof in vacation, and upon reasonable notice being given to the board of public works, or said acting commissioners, said Court or Judge shall, upon good cause shown, appoint a competent disinterested engineer, not a resident of any county through which such road passes, to examine such crossing and prescribe the plan and condition thereof, so as not to impede navigation. And such engineer shall, within twenty days from his appointment, make his return to the Circuit Court of the county where such crossing is to be made, subject to exception by either party. And thereupon the court shall, at the next term after the filing of said return, proceed to examine the same, and unless cause is shown, shall approve and confirm the same, and such order of confirmation shall be sufficient authority for the erection, use and occupancy of such bridge, in accordance with such plan: Provided, that no railroad company shall be authorized to construct any permanent bridge over any canal of the State, which shall be less than ten feet in the clear, above the top water line of said canal, and the piers and abutments of such bridge shall be placed so as not in any manner to contract the width of the canal, or interfere with free passage on the towing path.

Sec. 21. Be it further enacted, That whenever the lines of railroad of any railroad company in this State,
70 or any portion of such lines, have been or may

be constructed, so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break or interruption, such companies are hereby authorized to consolidate themselves into a single corporation in the manner following: The directors of said two or more corporations may enter into an agreement under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the corporation; the number of directors thereof, which shall not exceed thirteen; the time and place of holding the first election of directors; the number of shares of capital stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation; the manner of compensating stockholders in each of said two or more corporations, who refuse to convert their stock into the stock of such new corporation; with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporations shall possess all the powers, rights and franchises conferred upon such said two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this act: Provided, That all the stockholders in either of such corporations, who shall refuse to convert their stock into the stock of such new corporation, shall be paid at least par value for each of the shares so held by them, if they shall so require, previous to said consolidation being consummated, such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations, until after it has been submitted to the stockholders of each of said corporations separately, at a meeting thereof, to be called, upon a notice of at least thirty days, specifying the time and place of such meeting, and the object thereof, to be adddressed to each such stockholder, when their place of residence is known, and deposited in the

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post-office, and published for at least three successive weeks in one newspaper, in at least one of the cities or towns in which each of said corporations has its principal office of business, and has been sanctioned by such stockholders, by a vote of at least two-thirds of the amount of the stockholders present at such meeting, voting by ballot in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote; and when such agreements of the directors have been so sanctioned, by each of the meetings of the stockholders separately, after being submitted to such meetings in the manner above mentioned, then such agreement of directors shall be deemed to be the agreement of the said two or more corporations.

Sec. 22. Be it further enacted, That upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate or counterpart thereof in the office of the Secretary of State, the said two or more corporations mentioned or referred to in the said first section, shall be merged into the new corporation, provided for in such agreement, to be known by the name
72 therein mentioned, and the details of such agreement shall be carried into effect as provided therein.

Sec. 23. Be it further enacted, That upon the election of the first board of directors of the corporation created by agreement, as in the 21st section of this act mentioned, and by the provisions of this act, all and singular, the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular, their rights and interest in and to every species of property, real, personal, and mixed, and things in action, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer, and such new corporation shall hold and enjoy the same, together with the right of way, and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties

to such agreement, should have continued to retain the title, and to transact the business of such corporation; and the titles and real estate acquired by either of said two or more corporations shall not be deemed to revert or be impaired by means of any thing in this act contained: Provided, That all rights of creditors, and all liens upon the property of either of said corporations, parties to said agreement, shall be and are hereby preserved unimpaired; and the respective corporations shall continue to exist so far as may be necessary to enforce the same. And provided further, That all the debts, liabilities and duties of either company shall thenceforth attach to such new corporation, and to be enforced from the same, to the same extent, and in the
73 same manner as if such debts, liabilities and duties had been originally incurred by it.

Sec. 24. Be it further enacted, That any railroad company heretofore or hereafter incorporated may, at any time, by means of subscription to the capital of any other company, or otherwise, aid such company, in the construction of its railroad, for the purpose of forming a connection of said last mentioned road, with the road owned by the company furnishing said aid; or any railroad company organized in pursuance of law, may lease or purchase any part or all of any railroad constructed by any other company, if said companies' lines of said road are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said companies respectively; or any two or more railroad companies, whose lines are so connected, may enter into any arrangement for their common benefit, consistent with and calculated to promote the objects for which they were created: Provided, That no such aid shall be furnished, nor any purchase, lease or arrangement perfected, until a meeting of the stockholders of each of said companies shall have been called by the directors thereof, at such time and place, and in such manner as they shall designate, and the holders of at least two-thirds of the stock of such company

represented at such meeting, in person or by proxy, and voting thereat, shall have assented thereto.

Sec. 25. Be it further enacted, That the commissioners of any county, the city or town council of any 74 city or town trustees of any township, which city, town, or township, has heretofore subscribed to the capital stock of any railroad company, or turnpike or plank road company, and has issued, or shall hereafter issue any bonds for the payment of such subscription, are hereby authorized to sell the said stock or any part thereof, and on such terms as they shall deem to be for the interest of said county, city, town or township, respectively, and may apply the proceeds of such sale to the payment of the bonds by such county, city, town, or township, subscribed.

Sec. 26. Be it further enacted, That any railroad company in this State shall cause all its trains of cars for passengers to entirely stop upon each arrival at a station advertised by such company as a station for receiving passengers upon such trains, at least one-half of one minute. And every company and every person in the employment of such company, that shall violate, or cause to be violated, the provisions of this section, shall be liable to a forfeiture of not more than one hundred, nor less than twenty-five dollars, to be recovered in an action of debt, upon the complaint of any person, before any justice of the peace of the county in which such violation shall occur. And in all cases in which a forfeiture shall occur under the provisions of this section, the company whose agent shall cause or permit such violation, shall be liable for the amount of such forfeiture, and in all cases the conductor upon such train shall be held, *prima facie*, to have caused the violation of this section, which may occur upon the train in his charge, said forfeiture to be recovered in the name of the State of Alabama, for the use of common schools.

Approved December 29th, 1868.

To the introduction and reading of which
75 act the plaintiff objected on the ground that the same was not material to the issue joined, and was irrelevant and had no tendency to affect the right of plaintiffs to recover, which objection the court sustained and ruled that said act of the Legislature could not be introduced.

To which order, judgment, and ruling of the court, the defendant then and there and immediately upon the making of said ruling, and before the jury retired to consider of their verdict, excepted and tendered this, its Bill of Exceptions, and asked that the same be signed, sealed and made a part of the record in said cause, which was done accordingly.

And then the defendant offered in evidence a copy of the charter of the Columbus, Fayette & Decatur Railroad Company in Alabama, which copy it was agreed by the parties in open court was a true copy, and was to be accepted and received in lieu of the original, and as if it were duly certified and authenticated according to law. Said charter is in words and figures following, to-wit:

Articles of Incorporation.

The State of Alabama, County of Fayette.

This is to certify that in accordance with the provisions of an act entitled "An act to provide for the creation and regulation of Railroad Companies in the State of Alabama," approved December 29th, 1868.

We, Harrison Hale, J. T. Smith, I. B. Tyler, J. C. Robertson, John C. Moore and W. H. Kennedy have this day formed ourselves into a company, which shall be known under the name and style of "The Columbus, Fayette & Decatur Railroad Company" for the purpose of building a rail-
road, one terminus of which shall be at Colum-
76 bus, Mississippi, and the other at Decatur, Alabama.

Said railroad shall pass through the counties of Lowndes, in Mississippi, and through the counties of Sanford, Fayette, Walker, Winston, Laurence and Morgan in Alabama.

We further certify that capital stock of said company shall be one million of dollars, in shares of fifty dollars each.

Given under our hands and seals, this 7th day of February, A. D, 1871.

Harrison Hale, (seal)
J. T. Smith, (seal)
I. B. Tyler, (seal)
J. C. Robertson, (seal)
John C. Moore, (seal)
W. H. Kennedy, (seal)

State of Alabama, Fayette County.

Personally appeared before me, Joseph S. Clifton, an acting Justice of the Peace in and for said county, Harrison Hale, J. T. Smith, I. B. Tyler, John C. Robertson and John C. Moore, who acknowledged that they signed and sealed the foregoing certificate on the day and year aforesaid for the purpose therein mentioned.

In witness whereof, I have hereunto set my hand and private seal, this the 7th day of February, 1871.

J. S. Clifton (seal) J. P.

The State of Alabama, Fayette County.

I, John B. Burris, Clerk of the Circuit Court in and for said county, hereby certify that Joseph S. Clifton is one of the legal Justices of the Peace in and for said county, and full faith and credit are due his official acts in the premises.

77 In witness whereof I have hereunto set my hand and private seal, this 7th day of February, 1871.

John B. Burris, (seal)
Clk. Circuit Court.

Filed in office and recorded February 16th, 1871.

J. J. Parker,
Secretary of State.

I hereby certify that the above and foregoing is an exact transcript of the record in my office in the matter of the Columbus, Fayette & Decatur Railroad Company.

Sept. 30, 1881. W. W. Screws,
Sec. of State.

To the introduction in evidence or reading of said charter the plaintiff objected on the ground that the same was irrelevant and immaterial and constituted no defense to plaintiffs' action, which objection the Court sustained, and ruled that said charter could not be introduced or read in evidence. To which action, judgment, and ruling of the Court, the defendant then and there, and immediately upon the making of said ruling, and before the jury retired to consider of their verdict, excepted and tendered this, its Bill of Exceptions, and prayed that the same be signed, sealed, and made a part of the record, which is done accordingly.

Thereupon the defendant offered in evidence the copy of an act of the Legislature of the State of Mississippi, entitled "An act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama to commence, build and operate a railroad or way from Columbus, Mississippi, to the State line of Alabama, approved April 6th, 1871, which copy it was agreed by the parties in open court was a true copy and should be received as if duly certified and authenticated according to law, which act was in words and figures as follows, to-wit:

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Act of Incorporation.

An act to authorize the Columbus, Fayette & Decatur Railroad Company, of Alabama, to commence, build and operate a railroad or way, from Columbus, Mississippi, to the State line of Alabama.

Sec. 1. Be it enacted by the Legislature of the State of Mississippi, That the Columbus, Fayette & Decatur Railroad Company, chartered by the State of Alabama, by act of the General Assembly of Alabama, entitled "An act to provide for the creation and regulation of railroad companies in the State of Alabama," approved December 29th, 1868, shall be permitted to survey, build and operate a railroad from the town of Columbus, to the State line of Alabama, as a part of said road.

Sec. 2. Be it further enacted, That the said Columbus, Fayette & Decatur Railroad Company shall be entitled to all rights, privileges and immunities, and subject to all such restrictions as are granted, made and prescribed for the benefit, government and direction of said Columbus, Fayette & Decatur Railroad Company, within the State of Alabama, by act above recited.

Sec. 3. Be it further enacted, That said company shall have the right to receive donations of land in aid of the construction of said road or in payment of stock.

Sec. 4. Be it further enacted, That in consideration of the construction of said railroad, and of the great benefit the State will receive in the development of its resources by means of said railroad as a work of internal

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improvement, and also of the increased value which will thereby be added to the property of the State, thus enabling the State greatly to increase its revenue without additional and burdensome taxation upon the people, the State hereby agrees with said Company, which agreement shall be irrepealable for thirty years, that all taxes

to which said Company shall be subject for the period of thirty years, are hereby appropriated and set apart; and shall be applied to the payment of the debts and liabilities which the said company may have incurred in the construction of said road, or for money borrowed by said company upon lands or otherwise to be used in constructing said road, or paying debts incurred by said company in constructing the same. And it shall be the duty of the tax collector of Lowndes County in each and every year, to give said company a receipt in full for the amount of said taxes, upon receiving from said company an affidavit made by the president or cashier of said company that the amount of said taxes have actually and in good faith been paid and applied by said company, during the year, in payment of the debts incurred or money borrowed, as aforesaid, and which receipt, so given, shall be in full of all taxes, County, State and municipal, to which said company shall be subject; Provided, however, that whenever the profits of said company shall enable it to declare and pay to the stock holders an annual dividend of eight per cent upon the capital stock, over and above the payments of its debts and liabilities, then the appropriation of the taxes aforesaid shall cease, and said taxes shall be paid by said company to the tax collector, to be by him paid over as required by law.

Sec. 5. Be it further enacted, That no distinction or discrimination shall ever be made in the accommodations furnished persons or passengers traveling over the said road, who pay the same rate of fare, and that any violation of this provision shall work a forfeiture of the powers and franchises granted by this act. And provided further that this provision shall not prevent the said railroad company from exercising their own police regulations in running their trains over said road.

Sec. 6. Be it further enacted, That this act shall take effect and be in force from and after its passage. Approved April 6th, 1871.

To the introduction in evidence and reading of which act of the Legislature of Mississippi the plaintiff objected, on the ground that the same was irrelevant and immaterial and constituted no defence to plaintiff's action, which objection the Court sustained and ruled that said act could not be introduced or read in evidence.

To which action, judgment and order of the Court the defendant then and there and immediately upon the making of said ruling, and before the jury retired to consider of their verdict, excepted and tendered this, its bill of exceptions, and prayed that the same be signed, sealed and made a part of the record in said cause, which is done accordingly.

The defendant then offered in evidence a copy of an act of the Legislature of Mississippi entitled "An act supplemental to an act entitled "An act to authorize the
81 Columbus, Fayette & Decatur Railroad Company, of Alabama, to commence, build and operate a railroad or way, from Columbus, Mississippi, to the State line of Alabama, approved April 6th, 1871," approved February 1st, 1872," which copy it was agreed by the parties in open Court was a true copy and should be taken and considered as if the same was duly certified and authenticated according to law. Said act was in words and figures as follows, to-wit:

Supplemental Act.

An act supplemental to an act entitled "An act to authorize the Columbus, Fayette & Decatur Railroad Company, of Alabama, to commence, build and operate a railroad or way, from Columbus, Mississippi, to the State line of Alabama, approved April 6th, 1871."

Section 1. Be it enacted by the Legislature of the State of Mississippi, That upon application of the president of the

Board of Incorporation, or other authorized agent of the said Columbus, Fayette & Decatur Railroad Company, to the constituted authorities of the city of Columbus, or the county of Lowndes, in the State of Mississippi, for a subscription to aid in the construction of said railroad, said constituted authorities are hereby required, without delay to give notice, that within twenty days from the date of said notice, that the question of "Subscription" or "No subscription" by said city or county to said railroad, will be submitted to the qualified voters of said city or county, at a regular or special election to be held therein, which said election
82 shall be held at the usual place of voting, and shall be conducted in all respects as other elections in said city or county; and if at such election, two-thirds of the qualified voters shall be in favor of such "Subscription," then the constituted authorities of said city or county shall, and are hereby authorized and required, whenever the terms of said subscription are complied with by said railroad company, without delay, to issue their bonds due and payable at a time certain, and bearing such rate of interest as may be agreed upon, to the president and incorporation of said railroad company, or their successors, to the amount of said subscription, and said constituted authorities of said city or county, shall make such assessments upon the taxable property of said city or county making such subscription, as shall be necessary to pay the amount so subscribed, together with the interest stipulated in said bonds as it falls due: Provided, That the rate of interest shall not exceed eight per cent. per annum.

Section 2. Be it further enacted, That upon the assessment being made as provided in section first of this act, it shall be the duty of the tax collector of said city or county making such subscription, to collect the amount so assessed, as all other taxes are collected, and he shall pay the same to the treasurer of said city or county, and take his receipt therefor, which sum so subscribed and collected the treasu-

rer of said city or county shall safely keep and be responsible for, as all other taxes collected by him, and
83 shall pay out the same to the holder or holders of said bonds, or interest coupons thereof, when presented to him if the same shall be matured: Provided, said treasurer of said city or county shall not receive commissions for receiving, keeping or paying out such funds.

Section 3. Be it further enacted, That all laws of this State conflicting with the provisions of this act are hereby repealed; and that this act take effect and be in force from and after its passage. Approved February 1st, 1872.

To the introduction in evidence and reading of which act of the Legislature of Mississippi, the plaintiff objected on the ground, that said act was irrelevant and immaterial and constituted no defence to plaintiff's action, which objection the Court sustained and ruled that said act could not be read or introduced in evidence and excluded the same. To which action, judgment and ruling of the court the defendant then and there and as soon as said ruling was made, and before the jury retired to consider of their verdict, excepted, and tendered this, its Bill of Exceptions, and prayed that the same might be signed, sealed and made a part of the record, which was done accordingly. The defendant then offered in evidence a copy of an act of the Legislature of Mississippi entitled "An act to incorporate the Georgia Pacific Railway Company, and to define and enlarge its powers in the State of Mississippi," approved February 15th, 1882, which copy it was agreed by the parties
84 in open Court was a true copy and should be received as if it were duly certified and authenticated according to law, which act was in words and figures as follows, to-wit:

An act to incorporate the Georgia Pacific Railway Company and to define and enlarge its powers in the State of Mississippi.

Whereas, The Elyton and Aberdeen Railroad Company, a corporation created under and in pursuance of the laws of the State of Alabama, was by virtue of an act of the Legislature of the State of Mississippi, approved July 13th, 1870, authorized to extend its road in a westerly direction from the town of Aberdeen to some point on the Mississippi river, on such route as might be deemed most expedient; and

Whereas, The Columbus, Fayette and Decatur Railroad Company, a corporation likewise created under and in pursuance of the laws of the State of Alabama, was by virtue of an Act of the Legislature of the State of Mississippi, approved April 6th, 1871, authorized to build and operate as part of its railroad, a road from Columbus to the State line of Alabama, and whereas, the Greenville, Columbus & Birmingham Railroad Company, a corporation created under and in pursuance of the laws of this State, was by virtue of an act of the Legislature of the State of Mississippi, approved March 4th, 1873, authorized to construct and use a railroad from some point at or in the immediate vicinity of Greenville, to some point at or in the immediate vicinity of Columbus, thence to the State line of Alabama, which said last named company was afterwards in pursuance
85 of law, merged and consolidated with the Greenville, Deer Creek and Rolling Fork Railroad Company, the whole to be known and operated as the Greenville, Columbus & Birmingham Railroad Company, and,

Whereas, the said Greenville, Columbus & Birmingham Railroad Company, and the aforesaid Columbus, Fayette & Decatur Railroad Company, afterwards in pursuance of the laws of the States by which they were chartered, entered into a contract under seal, through their respective boards of directors, dated on the 11th day of October, 1881, which contract was afterwards adopted and sanctioned by the stockholders of the two companies, whereby the Columbus, Fayette & Decatur Railroad Company became the purchaser and owner of the entire rights, privileges, property, works

and franchises, of the Greenville, Columbus & Birmingham Railroad Company; and,

Whereas, Since the said purchase, the aforesaid Columbus, Fayette & Decatur Railroad Company, the Elyton and Aberdeen Railroad Company, and the Georgia Pacific Railway Company, a corporation likewise created under and in pursuance of the laws of the State of Alabama, have, in accordance with the provisions of the statutes of said State in such cases made and provided, been merged and consolidated into a new corporation, under the name of the Georgia Pacific Railway Company, with the view of building and operating a continuous line of railroad from Atlanta, in the State of Georgia, to the Mississippi river, either by way of Columbus or Aberdeen, as the company may hereafter determine to be best. Now therefore, for the purpose of facilitating and promoting the construction and operation of said continuous line of railroad.

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Section 1. Be it enacted by the Legislature of the State of Mississippi, That the Georgia Pacific Railroad Company is hereby incorporated and constituted a body politic, with all the rights, privileges and franchises heretofore conferred upon and possessed by the railroad companies hereinbefore named, or any of them in the State of Mississippi; and all the rights, privileges, powers and franchises in this State, which have been conferred upon the Georgia Pacific Railroad Company, in the State of Alabama, under the laws in that State incorporating said company.

Sec. 2. Be it further enacted, That in addition to the rights embraced in the preceding section, it shall be lawful for the said Georgia Pacific Railroad Company: 1. To build and operate such branches as the board of directors may direct. 2. To construct its railroad across any navigable stream in this State, but in erecting bridges or other structures for this purpose, it shall be done in such manner as not to obstruct navigation. 3. To cross, occupy and use

any public road in this State with its railroad, and to change such public road, but in all such cases it shall place such road or highway in a condition as good as that so used, occupied, or changed. 4. To cross or intersect any railroad in this State, and in case the terms of crossing or intersection cannot be agreed on by the railroad companies in interest, the same shall be determined by the board of supervisors of the county or the corporate authorities of the city or town where the crossing or intersection occurs. 5.
87 To build and operate a telegraph line along the line of said railroad; also to build, own, and operate steamboats, batteaux, barges, ferry-boats or vessels of any character, upon the waters of any navigable stream crossed or intersected by its railroad. But no ferry-boats shall be operated by it except at such points of crossing or intersection. 6. To enter upon all lands through which they may deem it necessary to construct said road, and to survey, lay out and construct said road and to agree and contract for the land, or right of way through the same, with the owners of the land through which they may intend to construct said railroad; and in case said lands belong to the estate of any deceased person, then with the executor or administrator of such; or in case the same belongs to a minor, then with his or her guardian; or in case said lands be school sections unleased, or belong to any county, then with the board of supervisors of the county in which said school sections may be situated. And the said executors, administrators, guardians and boards of supervisors are hereby declared competent to contract with the said company for the right to use, possess and occupy the lands of such estates, county or school sections, so far as may be necessary and useful to the purposes of said company. And the act and deed of such executors, administrators, guardians and boards of supervisors (the latter of whom may execute said deed by its president under its seal) shall pass the title to and in said land in the
88 same manner as if the said deed was executed by a legal owner of full age. And such execu-

tor, administrator or board of supervisors, shall account to those interested for the amount paid in pursuance to such agreement or deed, and shall be liable on their respective bonds for the amounts so paid to them. And if the said company cannot agree with the owner of the land through which they desire said road to pass, or the executor, administrator, guardian or board of supervisors aforesaid, it shall be lawful and it is hereby made the duty of the clerk of the county in which such lands lie, on the application of said company or its agents, or of said owner, executor, guardian or board of supervisors, to issue a writ of *ad quod damnum*, commanding the sheriff, that without delay he cause a jury of seven good and lawful men, householders or freeholders, of his county to be upon such land on a day to be by said sheriff fixed and appointed, and whereof it shall be the duty of said sheriff to give notice to said company, and to the said owner, executor, administrator, guardian or board of supervisors, at least five days before such day, if they be within his county, or if not, or if the owner or owners be unknown, then said notice shall be given by advertisement to be by said sheriff posted and fixed at the dwelling house, if such there be, or on a public and conspicuous part of said land, at least five days before such appointed day,

89 and then and there cause such jury, being duly sworn by such sheriff or some justice of the peace, to make true inquest of the damage suffered by such owner or board of supervisors by reason of making said road through the land. The qualification of the jurors summoned as aforesaid shall be determined by the sheriff or other officer empanneling said jury, and if any of said jurors fail to appear, or by reason of challenge for cause or otherwise, fail to sit on said inquest, the sheriff shall fill said jury, and if they fail to agree and render a verdict the sheriff shall again, on the same or a subsequent day, empanel a new jury or jurors until a verdict be had, which verdict and inquest regularly signed by said jury and certified by said sheriff, shall be returned into the

office of the clerk of the Circuit Court of the county in which such lands lie, and there remain amongst the records; and in addition to filing said inquest in the office of the said court aforesaid, all the proceedings in the matter of the condemnation of said land shall be recorded in the office of the Chancery Clerk of the county in which said lands lie. Either party who may conceive themselves aggrieved by the inquest rendered as aforesaid may file objections to the same with the clerk of said Circuit Court, embodying the facts and objections in a petition addressed to the Judge of the Circuit Court in the county in which such land lies, showing why said inquest should be set aside, and if, upon hearing said petition and the proof adduced, good cause be shown why said verdict and inquest be set aside, then the Judge of said Circuit Court may quash and set aside said inquest, and direct that another jury assess said damages, be summoned and empanelled as aforesaid: Provided, That said objection be filed with said Clerk within ten days after said inquest has been filed. And provided further, that the filing of said objection or the setting aside of said verdict and inquest shall not prevent said company from using or occupying said land, after tender or payment of the amount of said damages as hereinafter provided for. And should the subsequent verdict or verdicts of the jury or juries exceed the amount ascertained by the first jury, then said company shall pay said excess; but should said subsequent verdict or verdicts be for a less sum than that paid into the hands of the clerk of the court aforesaid, then said excess shall be repaid to said company by said clerk. And the said inquest shall vest in said company the right to occupy and use such lands for the purposes of said railroad, on the payment of the damages therein assessed against said company, or by depositing the same with the Clerk of the Circuit Court of the county in which such lands lie: Provided, however, that said amount shall be retained by said Clerk until after said objections shall have been acted upon by the Judge of the

Circuit Court of the county in which such lands lie, should notice be given him in writing by said company or its agent that objections to said verdicts will be filed by said company: Provided, however, that before the application for the writ provided for in the preceding section, the said company may tender to the owner or owners
91 of any such lands, a sum of money by said company deemed equivalent to the damage to be sustained, and upon the refusal to accept the sum tendered and a verdict for the same amount or a less sum, on proceedings had for the condemnation of said lands, the costs shall be taxed to and paid by the owner or owners of the land: Provided further, that should objections be filed to the inquest of the jury by the owner or owners of land, or by the other persons mentioned in the preceding sections, and said verdict and inquest be set aside and a new jury summoned, etc., as therein provided, and a verdict for the same amount or a less sum be rendered by a subsequent jury, the costs of holding all inquests, except the first, shall be taxed to and paid by the party interposing said objection. And it shall be the duty of the sheriff to appoint and hold said inquest within ten days after the receipt of said writ of *ad quod damnum*, and five days in addition are allowed him for every additional jury which he may have under said writ. And for every default therein, the said sheriff shall be fined by the Circuit court, at the instance of either party, not less than twenty, nor more than one hundred dollars. And every juror summoned shall be fined not less than ten dollars for non-attendance; of all such fines or cost the Circuit Court of the county shall have jurisdiction. There shall be allowed the following fees: To the Clerk of the Circuit Court for every writ of *ad quod damnum*, seventy-five cents; for receiving and filing inquest, seventy-five cents; to the sheriff, for giving notice, twenty-five cents; for holding inquest, five dollars; and for summoning the wit-
92 nesses 75 cents each; jurors, each two dollars *per diem;* which fees are not allowed until the

verdict is returned and filed, and shall be taxed in the bill of costs, and paid by the said company. And the said company for the purpose of making said railroad, or repairing or changing it afterwards, shall have the same right of entry on adjacent land, and to cut, quarry, dig, take, and carry away stone, wood, gravel, earth, or other material which may be necessary, as is before provided as to the right of way.

7. To agree and contract for lands necessary for depots, or other purposes, or to condemn the same in like manner, and by like proceedings, as hereinbefore provided for the lands on the route of the road. 8. To carry on the business of dealing in coal, compressing cotton, and of shipping, forwarding and receiving freight at any point on its line, on such terms as the board of directors may prescribe, and to this end said company are hereby authorized to own and possess as much land on the bank of the Mississippi, and other rivers crossed by it elsewhere on its line, as its board of directors may deem necessary and proper, and to own one or more wharf-boats and all other water crafts of every description whatever that may be necessary for the proper conduct of said business. And said company may acquire said lands or rights therein, easements in, over, or upon the same, and erect and use such wharves, warehouses, depots, elevators cotton compresses, and such other buildings or structures as the board of directors may determine, and said company may agree and compromise with the
93 owners of said land, or rights therein, easement in, over, or upon the same, or with the executor, administrator, guardian, or board of supervisors as hereinbefore provided, and in case said company cannot agree or compromise with said parties, then said company may proceed to have such land, rights therein, easements in, over, or upon the same, condemned as hereinbefore provided.

Sec. 3. Be it further enacted, That upon application of the president or other authorized agent of the Georgia Pacific Railroad Company to the constituted authorities of any

county, city or town in the State of Mississippi, for a donation to aid in the construction of said railroad, or for a subscription to the capital stock thereof, said constituted authorities are hereby required without delay, to give notice that, within twenty days from the date of said notice, the question of "Donation" or "No Donation," or of "Subscription" or "No Subscription," as the case may be, by said city, town or county, to said railway company will be submitted to the qualified voters of said city, town or county, at a general or special election to be held therein, which said election shall be held at the usual place of voting, and shall be conducted in all respects as other elections in said city, town or county, and if at such election two-thirds of the qualified voters shall be in favor of such "Donation" or "Subscription" then the constituted authorities of said city, town or county, shall and they are hereby authorized and required to cause at once to be executed and delivered to three trustees to be named in the aforesaid petition, coupon bonds
94 of the city, town or county to the amount of such subscription or donation, due and payable at such time certain and bearing such rate of interest as may be set forth in said petition, to be delivered by said trustees, or their survivors or successors, to said railway company or its successors, whenever the terms of said donation or subscription as set forth in said petition are complied with by said railway company; and said constituted authorities of said city, town or county, shall make such assessment upon the taxable property of said city, town or county making such donation or subscription as shall be necessary to pay the amount so donated or subscribed, together with the interest stipulated in said bonds as such principal and interest respectively mature, provided, that the rate of interest shall not exceed eight per cent per annum, and provided further, that in the event of the death, or failure, or refusal to act on the part of any of the trustees named as aforesaid, any vacancy or vacancies occurring by reason thereof may be filled by the chancellor of the district in which said city, town or county

is situated, on motion of said railway company, the constituted authorities of such city, town or county, having at least ten day's notice of such motion. And upon the assessment being made as hereinbefore provided, it shall be the duty of the tax collector of said city, town or county, making such donation or subscription, to collect the amounts so assessed as all other taxes are collected, and he shall pay the same to the treasurer of said city, town or county, and take his receipt therefor, which sum so collected the treasurer of said city, town or county shall safely keep and be responsible for as all other taxes collected by him, and shall apply the same in payment of the principal and interest of the bonds issued by the city, town or county as the same mature according to their tenor and effect.

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Sec. 4. Be it further enacted, That section 21 of an act entitled "An act to incorporate the Arkansas City and Grenada Railroad Company," approved March 5th, 1872, be, and the same is hereby repealed.

Sec. 5. Be it further enacted, That it shall be lawful for the Georgia Pacific Railway Company to borrow money as the same may be deemed expedient by its board of directors, and to secure the payment thereof by mortgages upon its works, property, rights, privileges, franchises and net revenues or any part thereof.

Sec. 6. Be it further enacted, That this act take effect and be in force from and after its passage. Approved February 15th, 1882.

To the introduction in evidence and reading of which act the plaintiff objected on the ground that it was immaterial and irrelevant and constituted no defence to plaintiff's action. Which objection the Court sustained and ruled that said act could not be introduced or read, and excluded the same, for the reason set forth in the objection. To which action, judgment and ruling of the Court, the defendant then and there and as soon as said ruling was made, and before

the jury retired to consider their verdict, excep-
96 ted and tendered this, its Bill of Exceptions, and prayed that the same be signed, sealed and made a part of the record which is done accordingly.

And thereupon defendant offered in evidence a copy of an act of the Legislature of Mississippi entitled "An act to ratify and confirm the several acts of consolidation, merger and sale of certain railroad companies in this State into one company, to be known as the Georgia Pacific Railway Company," Approved March 4th, 1882, which copy it was agreed by the parties in open court was a true copy, and should be received as if it was duly certified and authenticated according to law.

Said Act was in words and figures as follows, to-wit:

AN ACT to ratify and confirm the several Acts of consolidation, merger and sale of certain railroad Companies in this State into one Company, to be known as the Georgia Pacific Railway Company.

Whereas, on the 13th day of September, 1880, through the duly constituted officers of the two companies, respectively, the Greenville, Deer Creek & Rolling Fork Railroad Company, and the Greenville, Columbus & Birmingham Railroad Company, both companies chartered under the laws of this State, adopted articles of consolidation and merger by which the first named of said companies became consolidated with and merged into the Greenville, Columbus & Birmingham Railroad Company. And whereas, by deed dated October 11th, 1881, said Greenville, Columbus & Bir-
97 mingham Railroad Company, sold and conveyed all of its rights, privileges, franchises and property of every kind to the Columbus, Fayette & Decatur Railroad Company; and whereas, by an agreement made on the 10th day of November, 1881, signed by the proper officials of and ratified by the stockholders of the three companies hereinafter named, the Columbus, Fayette & Decatur Railroad Company, the Elyton & Aberdeen Railroad Com-

pany, and the Georgia Pacific Railroad Company, in pursuance of the powers vested in them by their charters in this State, and in the State of Alabama, respectively, and for the purpose of facilitating the construction of a continuous line of railroad from the city of Atlanta, in Georgia, to the Mississippi river, in this State, and creating one company for that purpose, merged and consolidated said three companies to be known and operated as the Georgia Pacific Railway Company; therefore,

Section 1. Be it enacted by the Legislature of the State of Mississippi, That, all of said several acts of sale, purchase, merger and consolidation had and made between said several railroad companies, as hereinbefore recited, be, and are hereby ratified and confirmed and declared binding.

Sec. 2. Be it further enacted, That the subscriptions heretofore voted and made to the capital stock of the Greenville, Columbus & Birmingham Railroad Company by the towns of Greenville, Carrollton and Winona, and the county of Leflore, and the donation of $100,000 in its bonds heretofore agreed to be made by the town of Columbus, to the Columbus, Fayette & Decatur Railroad Company, but which have not yet been paid over be, and are hereby declared to be, payable to the said Georgia Pacific Railway Company, in the same manner, and upon the same terms and conditions, and under the same limitations and restrictions, that they were or would have become payable to the said Greenville, Columbus & Birmingham Railroad Company, and the said Columbus, Fayette & Decatur Railroad Company, respectively.

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Sec. 3. Be it further enacted, That the municipal authorities of any town or city on or near the line of said railway company, or any of its branches, shall be and are hereby authorized and empowered to grant to said railway company, upon such terms as may be agreed upon the right of way for the main line of said railroad, or for any of its branches, or for switches, or side-tracks, over and through

any street or streets, and alley or alleys of said town or city.

Sec. 4. Be it further enacted, That said company may consolidate with any other railroad company in or out of the State of Mississippi, upon such terms as the consolidating company may agree upon, or it may purchase the franchises and property of such other company or companies; and it may lease its railroad and all its property and franchises, rights, powers, privileges and immunities then owned, or thereafter to be acquired, or lease other rail-
99 roads in, or out of the State, for a term of years, or in perpetuity; and upon such consolidation, the consolidated company shall have and enjoy all the property, rights, privileges, powers, liabilities and immunities and franchises belonging to or enjoyed by the said Georgia Pacific Railway Company; but such consolidation shall not have the effect of exempting from taxation the railroad or property owned by such other consolidating company prior to its consolidation, with the said The Georgia Pacific Railway Company; nor of exempting from taxation any property which the consolidated company may, after such consolidation, acquire under the provisions of the charter of such other consolidating company. And in case of a lease, the lessee shall, so far as the terms of the lease may allow, enjoy and possess all the property rights, privileges, and immunities, powers, and franchises which the lessor had as to the leased premises.

Sec. 5. Be it further enacted, That this act take effect and be in force from and after its passage. Approved March 4th, 1882.

To the introduction in evidence and reading of which act of the Mississippi Legislature, the plaintiffs objected on the ground that the same was irrelevant and immaterial and had no tendency to effect plaintiffs right to recover.

Which objection the Court sustained, and ruled that said act could not be introduced or read, to which action, judg-

ment and ruling of the Court, defendant then and there, and as soon as said ruling was made, and before the jury retired to consider of their verdict, excepted and tendered this, its Bill of Exceptions, and prayed that the same be
100 signed, sealed and made a part of the record, which was done accordingly.

Facts Admitted.

And thereupon it was admitted by the plaintiffs in open Court as facts, to which the witnesses then in open Court would testify and to prove which the witnesses were then and there offered, but as to which facts, the introduction of evidence and the examination of the witnesses, was waived: that the vote by the voters of Columbus, which is claimed as the authority for the issuance of the bonds set out in the declaration, was had on the 8th day of May, A. D. 1872: That none of said bonds were issued prior to the 3rd day of October, 1882. That the termini of the Georgia Pacific Railway, is Greenville, Mississippi, which is situated on the Mississippi river, almost due west of Columbus, which is in the county of Lowndes and about ten miles from the eastern boundary of the State. The Georgia Pacific Railway runs from Greenville, Mississippi, through Columbus, Mississippi, to Birmingham, Alabama, which is almost due east of Columbus, Mississippi, and about 120 miles therefrom. From there it continues almost due east to Atlanta, which is in the State of Georgia. The town of Decatur is in Alabama, and is situated on the Tennessee river in Morgan county, about 140 miles northeast of Columbus, and about 85 miles nearly due north of Birmingham, at which point the Louisville & Nashville, and the Memphis & Charleston Railroads cross each other and did in 1872. The Georgia Pacific
101 Railway runs east and west through the southern portions of Lamar (formerly Sanford), Fay-

ette and Walker counties, Alabama, but does not touch Winston, Laurence or Morgan counties, Alabama, and does not touch the Memphis & Charleston Railroad or any point on the Tennessee river.

An air line from Columbus, Mississippi, to Decatur, Alabama, would extend from southwest to northeast through Lamar county, and through Fayette county, and would run through the northwest corner of Walker county, through Winston, dividing it almost in halves from southwest to northeast, through the southeast corner of Laurence county, and through Morgan county to Decatur.

The town of Aberdeen is in Monroe county, Mississippi, and about 25 miles north of Columbus, Mississippi. That the Columbus, Fayette & Decatur Railroad Company never built or constructed said railroad, or any part thereof, and did nothing to entitle said company to receive the donation of the City of Columbus and no railroad was constructed, or was begun to be constructed from Columbus to the State line of Alabama until after the acts of the Mississippi Legislature of February 15th, 1882, and March 4th, 1882, incorporating the Georgia Pacific Railway Company, when said Georgia Pacific Railway Company commenced to build the road authorized by its charter and above described.

And said facts being agreed upon as aforesaid
102 and the defendants offering to call, and calling witnesses to prove the same, the Court upon motion of plaintiffs, ruled that such testimony and eachpart of it, and the proof of such facts, and of each and every one of them, was immaterial, irrelevant and had no tendency to affect plaintiff's right to recover, and refused to permit the same or any of them, to be proven, and excluded the same, and each and every part thereof from the jury, as irrelevant and not tending to show any defence to plaintiffs action.

To which judgment, ruling and action of the Court in excluding said facts from the jury, and refusing to permit the same or any of them to be proven, the defendant then and there and immediately upon said ruling being made, and

before the jury retired to consider of their verdict, excepted and tendered this its Bill of Exceptions, and prayed that the same might be signed, sealed and made a part of the record which is done accordingly.

This being all the evidence offered in said cause, the Court on the conclusion of the testimony announced that it would peremptorily instruct the jury to find for the plaintiff; and did then instruct them as follows:

Court's Instruction to Jury.

"The Court instructs the jury to find for the plaintiffs, the amount sued for, with interest from February 1st, 1894, at the rate of six per cent per annum."

To the giving of which instruction the defendant then and there, as soon as the Court announced its purpose to give said charge and before the jury retired to consider of their verdict, excepted and tendered this, its Bill of Exceptions, and prayed that it might be signed, sealed and made a part of the record, which is accordingly done.

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To all of which judgments, orders and rulings of the Court so excepted to as aforesaid, the defendant having then and there, in open court, and immediately upon the announcing and making of such respective judgments, orders and rulings, and before the jury retired to consider of their verdict, duly excepted. Defendents now in open Court, and before the jury retire to consider of their verdict, tenders this, its Bill of Exceptions, and prays that the same may be signed, sealed, and made a part of the record in said cause, which is done accordingly, this, the 18th day of October, A. D., 1894, the same being a day in said term.

H. C. Niles, (seal)
Judge.

Endorsed filed October 18th, 1894.
G. R. Hill, Clerk.

104 (And afterwards, to-wit, on the 12th day of December, 1894, a petition for writ of error was filed in the words and figures following, to-wit:)

Petition For Writ of Error.

The United States of America, Eastern Division of the Northern District of Mississippi. } Circuit Court of the United States.

The Mayor & City Council of Columbus, Mississippi, plaintiffs in Error.

— vs. —

John M. Dennison, James G. Wilson and Frank T. Redwood, defendants in Error.

To the Honorable, the Judge of the Circuit Court of the United States in and for the Eastern Division of the Northern District of Mississippi: The petition of the Mayor & City Council of Columbus, Mississippi, a municipal corporation, respectfully represents, that in the record, proceedings and judgment of the Circuit Court of the United States, for the Northern District of Mississippi sitting at Aberdeen, for the Eastern Division of said Northern District, in a certain cause in said Court lately pending, wherein John M. Dennison, James G. Wilson and Frank T. Redwood (defendants in error) were plaintiffs, and this petitioner, The Mayor & City Council of Columbus, Mississippi, was defendant, manifest error hath intervened, to the injury of petitioner, as is particularly and specially shown in and by the "Assignment of Errors" which is hereto attached, and filed herewith as a part of this petition.

In which cause by the consideration and judgment of said Court, said John M. Dennison, James G. Wilson and

Frank T. Redwood recovered of and against
105 this petitioner, judgment for three thousand and sixty and 94-100 dollars, besides costs, on the 18th day of October, A. D. 1894.

Now therefore petitioner, feeling itself aggrieved by said manifest errors, respectfully prays that a writ of error (to operate as a Supersedeas), be issued, returnable to the Honorable, The United States Circuit Court of Appeals, for the fifth Circuit, in order that such errors may be revised and corrected. And as in duty bound petitioner will ever pray, &c.

William Baldwin,
James M. Arnold,
George A. Evans,
Attorneys for Petitioner.

Endorsed:

Received in office and filed this December 12th, 1894.
G. R. Hill,
Clerk.

Which said assignment of errors in said petition mentioned and attached thereto, was filed on the said 12th day of December, 1894, in the words and figures following, to-wit:

Assignment of Errors.

United States Circuit Court of Appeals for the Fifth Circuit.

The Mayor & City Council of Columbus, (Mississippi),
Plaintiffs in Error,

— vs. —

John M. Dennison, James G. Wilson and Frank T. Redwood, Defendants in Error.

And now before the Judges of the United States Circuit Court of Appeals for the fifth circuit, comes the said Mayor and City Council of Columbus, (Mississippi), by James M.

Arnold, George A. Evans and William Bald-
106 win, Esquires, its attorneys, and says that in the record and proceedings, had and entered in a certain cause lately pending in the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi, wherein John M. Dennison, James G. Wilson and Frank T. Redwood (defendants in error), were plaintiffs, and the Mayor and City Council of Columbus, plaintiffs in error, was defendant, there is manifest error in this, to-wit:

First, That the declaration in said record set forth, and the matters therein contained, are not sufficient in law for the said John M. Dennison, James G. Wilson and Frank T. Redwood, to have or maintain their aforesaid action against this defendant.

Second, There is error also in this, to-wit: That by the record aforesaid, it appears that the judgment given, was given for the said John M. Dennison, James G. Wilson and Frank T. Redwood against the Mayor and City Council of Columbus, whereas by the law of the land, the said judgment ought to have been given for the said Mayor and City Council of Columbus, against the said John M. Dennison, James G. Wilson and Frank T. Redwood.

Third, There was error in this, to-wit: That the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi, overruled the demurrer of the Mayor and City Council of Columbus, to the
107 declaration of said John M. Dennison, James G. Wilson and Frank T. Redwood, whereas, by the law of the land, the said demurrer should have been sustained, and said declaration and the matters therein contained, held insufficient to entitle said plaintiffs to their action against said Mayor and City Council of Columbus.

Fourth, Said Circuit Court erred in holding that said declaration sufficiently showed authority in the municipal authorities of Columbus to issue the bonds and coupons men-

tioned in said declaration, and overruling the first ground of demurrer filed by the Mayor and City Council of Columbus, to said declaration.

Fifth, Said Court erred in overruling the second ground of demurrer filed by the Mayor and City Council of Columbus, to said declaration.

Sixth, Said Court erred in overruling the third ground of demurrer filed by the Mayor and City Council of Columbus, to said declaration.

Seventh, Said Court erred in holding that said declaration sufficiently showed, that the vote of the qualified voters of the City of Columbus, assenting to an issue of bonds to the Columbus, Fayette & Decatur Railroad Company, authorized a delivery of said bonds to the Georgia Pacific Railway Company, and in overruling the fourth ground of demurrer filed to said declaration.

Eighth, Said Court erred in holding that
108 the act of the Mississippi Legislature, approved March 4th, 1882, entitled "An act to ratify and confirm the several acts of consolidation, merger and sale, of certain railroad companies in this State, into one corporation, to be known as the Georgia Pacific Railway Company," referred to and pleaded in said declaration, was valid Legislative authority, to deliver the bonds in the declaration mentioned, to the Georgia Pacific Railway Company, and in overruling the fifth ground of demurrer filed to said complaint.

Ninth, Said Court erred in overruling the sixth ground of demurrer to said declaration, and in holding that the act of the Mississippi Legislature entitled, "An act to ratify and confirm the several acts of consolidation, merger and sale of certain railroad companies in this State into one company, to be known as the Georgia Pacific Railway Company," approved March 4th, 1882, was authority for the issuance of the bonds and coupons in the declaration mentioned; whereas by section 14 of article 12 of the Constitution of Missis-

sippi, it is provided that the "Legislature shall not authorize any county, city or town, to become a stockholder in, or to lend its credit to, any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town at a special election, or regular election, to be held therein shall assent thereto."

Tenth, Said Circuit Court erred in holding
109 that the acts of the Mississippi Legislature, approved February 1st, 1872, entitled "An act supplemental to an act, entitled an act to authorize the Columbus, Fayette & Decatur Railroad Company, of Alabama, to commence, build, and operate a railroad, or way from Columbus, Mississippi, to the State line of Alabama," approved April 6th, 1871, conferred authority upon the municipal authorities of Columbus, to make a donation, and issue the bonds in said declaration mentioned, and issue the bonds in said declaration mentioned as a donation, to said railway company, whereas it appears by said act of the Legislature, that the power conferred on said authorities was, to "Subscribe in aid of said railroad company," and in overruling the 7th, 8th, and 9th, grounds of demurrer filed to said declaration.

Eleventh, The said Circuit Court erred in holding that a vote of the qualified voters of the city of Columbus, taken in May, 1872, was authority for the issuance of bonds, in October, A. D., 1882, and in overruling the tenth ground of demurrer to said declaration.

Twelfth, Said Court erred in overruling the 11th ground of demurrer to said declaration.

Thirteenth, Said Court erred in not sustaining the 12th ground of demurrer to the declaration and in holding that the declaration sufficiently showed that the bonds
110 and coupons in said declaration set forth, were binding upon the Mayor and City Council of Columbus.

Fourteenth, Said Court erred in not sustaining the Thirteenth ground of demurrer to the declaration.

Fifteenth, Said Court erred in not sustaining the Fourteenth ground of demurrer to the declaration.

Sixteenth, Said Court erred in overruling the Fifteenth ground of demurrer to the declaration.

Seventeenth, There was also error in this: That the said Circuit Court sustained a demurrer to the second plea filed to said declaration, or the plea of *nil debit*, and held that the same was no answer to the declaration, whereas said plea, and the matters therein contained, was and is a full and sufficient defence and bar to the plaintiff's action.

Eighteenth, There was also error in this, to-wit: That said Circuit Court ruled that the third plea by the Mayor and City Council of Columbus pleaded to the declaration, was no answer to said declaration, and sustained a demurrer thereto, whereas, in and by said declaration it appears, that the bonds and coupons forming the basis of said suit, were authorized to be issued upon the assent of two-thirds of the qualified voters of the city of Columbus, to aid the Columbus, Fayette & Decatur Railroad Company, and
111 that the same were delivered to the Georgia Pacific Railway Company, by authority of an act of the Mississippi Legislature, approved March 4th, 1882, and in and by said plea it appeared, that said Columbus, Fayette & Decatur Railroad Company, was by its charter, and the law creating it, to build a railroad with termini at Columbus, Mississippi, and Decatur, Alabama; whereas the said Georgia Pacific Railway Company, was a different corporation, with different purposes, and chartered for the purpose of building a different road, and one to aid which, no assent of the qualified voters had been given, or required, by said act of the Legislature directing the delivery of said bonds.

Nineteenth, There was error also in this, to-wit: That

said Court sustained a demurrer to the fourth plea pleaded to the declaration; whereas, said plea and the matter therein contained was and is a full and sufficient defence and bar to plaintiff's action.

Twentieth, There was error in this, to-wit: That said Court sustained a demurrer to the fifth plea to the declaration; whereas, said plea and the matter therein set forth, and pleaded, were and are, a full and sufficient defence and bar to plaintiff's action.

Twenty-one, Said Court erred in this, to-wit: In holding that the seventh plea of said Mayor and City
112 Council of Columbus, to the declaration, was no answer thereto, and in sustaining a demurrer thereto; whereas, said plea and the matter therein pleaded was and is, a full and sufficient defence and bar to plaintiff's action.

Twenty-two: There was error also in this, to-wit: That said Court sustained a demurrer to the eighth plea filed to the declaration, and held that said plea was no answer thereto.

Twenty-three, There was also error in this, to-wit: That said Court sustained a demurrer to the ninth plea pleaded to said declaration, and held that said plea was insufficient, and constituted no defence to said declaration.

Twenty-fourth, There was error in this, to-wit: That said Court held that the tenth plea pleaded to said declaration, was no defence to said declaration, and sustained a demurrer thereto.

Twenty-five, Said Court erred in sustaining the demurrer to the eleventh plea to the declaration, and in holding the same to be no answer to said declaration.

Twenty-sixth, Said Court erred in holding that a vote of the qualified voters of the City of Columbus, taken in
1872, was sufficient authority for the issuance of
113 the bonds and coupons sued on, which it is alleged in said plea were issued more than ten years

after the said vote, of which plaintiffs had notice, and in sustaining the demurrer to the twelfth plea to said declaration.

Twenty-seventh, There was error in this-to-wit: That said Court sustained a demurrer of plaintiffs to the 13th plea filed to said declaration; whereas, said plea so filed, and the matters therein alleged was, and is a full and sufficient defence and bar to plaintiff's action.

Twenty-eighth, Said Court erred in this, to-wit: In sustaining the demurrer of plaintiff's, to the 14th plea, filed to said declaration, and in holding the same insufficient and no defence to said action.

Twenty-ninth, There was also error in this, to-wit: That said Court sustained a demurrer to the 15th plea pleaded to the declaration, and held that the same was no defence to said declaration; whereas said plea and the matters therein pleaded, was and is, a full and sufficient defence and bar to said action.

Thirtieth, There was error also in this, to-wit: That on the trial of said cause, the defendant offered and read in evidence without objection, an agreement and stipulation duly signed and agreed to, and filed in said cause,
114 and made a part of the record, whereby it was admitted and agreed, that the following were facts, and should be considered as duly proved, subject to objection for immateriality, incompetency and as not constituting a defence: That the vote of the voters of Columbus, which is claimed as the authority for the issuance of the bonds set out in the declaration, was had on the 8th day of May, A. D. 1872. That none of said bonds were issued prior to the third day of October, 1882.

That the termini of the Georgia Pacific Railway is Greenville, Mississippi, which is situated on the Mississippi river, almost due west of Columbus, which is in the county of Lowndes and about ten (10) miles from the eastern boundary of the State.

The Georgia Pacific Railway, runs from Greenville, Mississippi, through Columbus, Mississippi, to Birmingham, Alabama, which is almost due east of Columbus, Mississippi, and about 120 miles therefrom. From there it continues almost due east to Atlanta, which is in the State of Georgia.

The town of Decatur is in Alabama, and is situated on the Tennessee river, in Morgan county, about 140 miles northeast of Columbus, and about eighty-five miles nearly due north of Birmingham, at which point the Louisville and Nashville, and the Memphis & Charleston Railroads cross each other, and did in 1872. The Georgia Pa-
115 cific Railway runs east and west through the southern portion of Lamar (formerly Sanford), Fayette and Walker counties, Alabama, and does not touch Winston, Laurence or Morgan counties, Alabama, and does not touch the Memphis & Charleston Railroad, or any point on the Tennessee river.

A line from Columbus, Mississippi, to Decatur, Alabama, would extend from southwest to northeast, through Lamar county and through Fayette county, and would run through the northwest corner of Walker county, through Winston, dividing it almost in halves from southwest to northeast, through the southeast corner of Laurence county, and through Morgan county to Decatur.

The town of Aberdeen is in Monroe county, Mississippi, and about 25 miles north of Columbus, Mississippi. Whereupon after said agreed facts had been read to the jury, the plaintiff moved to exclude all such facts from the consideration of the jury, on the ground that each was irrelevant, and immaterial. And the Court thereupon instructed the jury, that they could not consider said facts or any of them, and that the same were excluded from their consideration.

Thirty-one, Said Court erred in this, to-wit: That upon the trial of said cause the defendant offered in evidence a copy, agreed and admitted to be a true copy, and which was

agreed to be received as if certified and authenticated as provided by law, by agreement, duly filed and made
116 a part of the record, of an act of the "General Assembly of Alabama," entitled "An act to provide for the creation and regulation of railroad companies, in the State of Alabama," it being the act under, and by virtue of which the Columbus, Fayette & Decatur Railroad Company was chartered, and being the act adopted by the Legislature of the State of Mississippi, in the act entitled "An act to authorize the Columbus, Fayette & Decatur Railroad Company of Alabama, to commence, build and operate a railroad or way, from Columbus, Mississippi, to the State line of Alabama," approved April 6th, 1871, by the first section of which act it was provided that any number of natural persons, not less than five, might become a body corporate, with the rights, powers and privileges conferred, and subject to the restrictions of said act.

By the second section of which act it was provided, that such persons, associating to form a company for the purpose of constructing a railroad, should under their hands and seals, make a certificate, specifying: —

First, The name assumed by such company.

Second, The name of the place of the termini of said road, and the county or counties through which said road shall pass.

Third, The amount of capital stock neces-
117 sary to construct such road, Which certificate should be acknowledged before a Justice of the Peace, and certified by the Clerk of the Circuit Court, and forwarded to, and filed with the Secretary of State.

By section three it was provided that, on compliance with the foregoing provisions, the persons named, and their associates and successors, should become a body corporate, &c.

By section four, it was provided, that, the corporation

so formed, might construct and maintain a railroad *between the points named in the certificate*, commencing at, or within, and extending to or into any town, city or village named *as the place of the termini* of such road, and may construct branches *to other towns or places within the limits of any county through which said road may pass.*

By section 15 of the act it is provided, that such companies may acquire, by purchase or gift, any lands in the vicinity of said railroad, or through which the same may pass, but there are no provisions in the act for donations of money, or personal property.

By section 21 of said act it was provided, that whenever the lines of any railroad company, in this State or any portion of such lines, have been, or may be, constructed, so as to admit the passage of burden or passenger cars over any two or more such roads continuously, without break
118 or interruption, such companies are authorized to consolidate themselves into a single corporation, in the manner provided in said act.

Thirty days' notice to the stockholders, and their assent thereto is required, and it is provided, that all the stockholders of either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid at least par value, for each of the shares held by them, if they shall so require, previous to said consolidation.

Which act the Court refused to permit the defendant to introduce or read, on the ground that the same was immaterial, and was irrelevant, and had no tendency to affect the plaintiff's right to recover.

Thirty-two, The Court erred in this, to-wit: That on trial of said cause defendant offered in evidence, a copy of the charter of the Columbus, Fayette & Decatur Railroad Company in Alabama, which copy, it was agreed in open Court, was a true copy, and was to be accepted and received,

in lieu of the original, as if it were duly certified and authenticated according to law.

Which charter was in the form required, and in accordance with the provisions of the act of the General Assembly of Alabama, set out in the 31st assignment of errors, by which charter it appeared, that six persons therein named, on the 7th of February, 1871, were incorporated in accordance with said General Statute of Alabama, as
119 "The Columbus, Fayette & Decatur Railroad Company," "for the purpose of building a railroad, one terminus of which *should be at Columbus, and the other at Decatur, Alabama*," which road it was provided, should pass through the counties of Lowndes in Mississippi, Sanford (now Lamar), Fayette, Walker, Winston, Laurence and Morgan, in Alabama.

Whereupon, the Court excluded said charter, and refused to permit the same to be read, on the ground that the same was irrelevant and immaterial.

Thirty-third, The Court also erred in this, to-wit: That upon the trial of said cause, defendant offered in evidence an act of the Legislature of Mississippi, entitled "An act to authorize the Columbus, Fayette & Decatur Railroad Company, of Alabama, to commence, build and operate a railroad or way, from Columbus, Mississippi, to the State line of Alabama," approved April 6th, 1871, by which it was provided that the Columbus, Fayette & Decatur Railroad Company, chartered by the State of Alabama, by act of the General Assembly entitled "An act to provide for the creation and regulation of railroad Companies in the State of Alabama," approved December 29th, 1868, should be permitted to survey, build and operate a railroad, from the town of Columbus, to the State line of Alabama, as a part of said railroad.

By section 2 of said act it was provided that said company should be entitled to all rights, privileges
120 and immunities, and subject to all the restrictions granted, made and prescribed by the above

recited act of the General Assembly of Alabama.

By section 3, of said act it was provided, that said company should have the right to receive donations of land, in aid of the construction of said railroad, or in payment of stock. Whereupon the Court excluded said act of the Legislature and refused to permit the same to be introduced, on the ground that the same was immaterial and irrelevant.

Thirty-four: The Court also erred in this, to-wit: That upon the trial of said cause, the defendant offered in evidence, the act of the Legislature of Mississippi, entitled "An act supplemental to an act, entitled an act to authorize the Columbus, Fayette & Decatur Railroad Company, of Alabama, to commence, build and operate a railroad or way, from Columbus, Mississippi, to the State line of Alabama, approved April 6th, 1871", approved February 1st, 1872, the same being the act referred to in the bond sued on. By which act it was provided, that the constituted authorities of the City of Columbus, should, upon application to that end, submit to the qualified voters of said city, the question of "Subscription" or "No Subscription," by said city to said railroad, at a general or special election, to be held in said city, and that if at such election, two-thirds of the qualified voters should be in favor of such "Subscription," then the authorities of said city were authorized, whenever the terms of such subscription were complied with, to issue their bonds, due and payable at a time certain, and bearing such rate of interest as might be agreed upon, to the president and incorporation of said railroad company, and their successors, to the amount of said subscription, and to assess the taxable property of said city to pay the amount so subscribed, together with the interest. Section two provided for the manner of collection of such taxes, whereupon the court excluded said act of the Legislature, and refused to permit the same to be introduced, on the ground that the same was irrelevant and immaterial.

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Thirty-five, The Court also erred in this, to-wit: That

on the trial of said cause defendant offered in evidence an act of the Legislature of the State of Mississippi, entitled "An act to incorporate the Georgia Pacific Railway Company, and to define and enlarge its powers, in the State of Mississippi," approved February 15th, 1882, wherein it is recited, That whereas, the Georgia Pacific Railway Company, was formed with the view of building and operating a continuous line of railroad, from Atlanta, in the State of Georgia, to the Mississippi river, either by way of Columbus or Aberdeen, as the Company might thereafter determine to be best, now therefore, for the purpose of facilitating and promoting the construction and operation of
122 said continuous line of railroad, it was enacted, that said Georgia Pacific Railway Company, is incorporated, &c.

By section 2 of said act, it was provided, that it should be lawful for the said Georgia Pacific Railway Company, among other things, to build and operate a telegraph line along the line of said railroad. Also to build, own and operate, steamboats, batteaux, barges, ferry-boats or vessels of any character, upon the waters of any navigable stream, crossed or intersected by its railroad. To carry on the business of dealing in coal, compressing cotton, to own wharf boats or other water crafts of every description, that might be necessary for the proper conduct of said business, to build warehouses, elevators, cotton compresses, &c. By section 8 of said act, it was provided, that upon application, the constituted authorities of any county, city or town, might submit to the voters of said county, city or town, the question of "Donation" or "No Donation", or of "Subscription" or of "No Subscription," as the case may be, by said city, town or county to said railroad company, and if two-thirds of the qualified voters, should be in favor of such "Donation," or "Subscription," then coupon bonds should be issued, &c., which act of the Legislature, the Court excluded, and refused to permit it to be introduced, on the ground that the same was irrelevant and immaterial.

Thirty-sixth, Said Court also erred in this, to-wit: That upon the trial of said cause, the defendant offered in evidence an act of the Legislature of Mississippi, entitled "An act to ratify and confirm the several acts of consolidation, merger and sale of certain railroad companies, in this
123 State into one company, to be known as the Georgia Pacific Railway Company," approved March 4th, 1882. By which act it was recited, that whereas, the Columbus, Fayette & Decatur Railroad Company, and other companies therein named, had become consolidated into one company, to be known as the Georgia Pacific Railway Company, for the purpose of facilitating the construction of a continuous line of railroad, from the City of Atlanta in Georgia, to the Mississippi river in this State, and creating one company for that purpose, therefore be it enacted, &c., * * * * * * That the donation of one hundred thousand ($100,000) dollars in its bonds, heretofore agreed to be made, by the town of Columbus to the Columbus, Fayette & Decatur Railroad Company, but which have not yet been paid over, be, and are, hereby declared to be, payable to the said Georgia Pacific Railway Company, in the same manner, and upon the same terms and conditions, and under the same limitations and restrictions, that they were, or would have become, payable to the Columbus, Fayette & Decatur Railroad Company. Whereupon the Court excluded said act of the Legislature, and refused to permit the same to be read in evidence, on the ground that the same was irrelevant and immaterial.

Thirty-seventh, Said Court also erred in this, to-wit: That upon the trial of said cause, defendant offered to, and did call witnesses to prove the following facts, whereupon the plaintiffs in open Court, waived the
124 examination of witnesses to said facts, and admitted in open Court, that the following were facts, to which said witnesses then called, would testify, as follows, to-wit, That the vote by the voters of Columbus, which is claimed as the authority for the issuance of the bonds set out in the declaration, was had on the 8th day of

May, 1872. That none of said bonds were issued prior to the 3rd day of October, 1882.

That the termini of the Georgia Pacific Railway is Greenville, Mississippi, which is situated on the Mississippi river almost due west of Columbus, which is in the county of Lowndes, and about ten (10) miles from the eastern boundary of the State.

The Georgia Pacific Railway runs from Greenville, Mississippi, through Columbus, Mississippi, to Birmingham, Alabama, which is almost due east of Columbus, Mississippi, and about 120 miles therefrom.

From thence it continues almost due east, to Atlanta, which is in the State of Georgia.

The town of Decatur is in Alabama, and is situated on the Tennessee river, in Morgan county, about 140 miles northeast of Columbus, and about 85 miles nearly due north of Birmingham, at which point the Louisville & Nashville and the Memphis & Charleston cross each other, and did in 1872.

The Georgia Pacific runs east and west through the southern portions of Lamar (formerly Sanford), Fayette, and Walker counties, Alabama, but does not touch Winston, Laurence or Morgan counties, Alabama, and does not touch the Memphis & Charleston Railroad or any point on the Tennessee river.

An air line from Columbus, Mississippi, to Decatur, Alabama, would extend from southwest to northeast, through Lamar county, and through Fayette county, and would run through the northwest corner of Walker county, through Winston, dividing it almost in halves from southwest to northeast, through the southeast corner of Laurence county and through Morgan county to Decatur.

The town of Aberdeen is in Monroe county, Mississippi, and about 25 miles north of Columbus, Mississippi.

That the Columbus, Fayette & Decatur Railroad Com-

pany, never built or constructed said railroad, or any part thereof, and did nothing to entitle said company to receive the donation of the city of Columbus, and no railroad was constructed, or begun to be constructed, from Columbus towards the State line of Alabama, until after the acts of the Mississippi Legislature of February 15th, 1882, and March 4th, 1882, incorporating the Georgia Pacific Railway Company, when said Georgia Pacific Railway Company, commenced to build the road authorized by its charter, and above described.

Whereupon, the Court ruled that such testimony, and each part of it, and the proof of such facts, and each and every one of them, was immaterial and irrelevant, and had no tendency to affect plaintiff's right to recover
126 and refused to permit the same, or any part of them to be proved, and excluded the same, and each and every part thereof, from the jury as irrelevant and immaterial.

Thirty-eighth, The court also erred in this, to-wit: That upon the conclusion of the testimony the Court instructed the jury to find for the plaintiff, the amount sued for, with interest from February first, 1894, at the rate of 6 per cent per annum.

Thirty-ninth, The Court also erred in this, to-wit: In holding that the evidence offered by plaintiffs upon said trial entitle them to judgment.

Forty, The Court also erred in entering the judgment in favor of plaintiffs, and against defendant for the amount sued for with interest.

William Baldwin,
James M. Arnold,
George A. Evans,
Att'ys for Plaintiff in Error.

Endorsed:

Received in office and filed this December 12th, 1894.
G. R. Hill, Clerk.

And on said 12th day of December, 1894, an order and *fiat* of the judge, for writ of error and supersedeas, was filed in the words and figures following, to-wit:

Fiat of Judge For Writ of Error.

127 Circuit Court of the United States for the Northern District of Mississippi, Eastern Division.

The Mayor and City Council of Columbus (Mississippi),

— vs. — Plaintiffs in error.

John M. Dennison, James G. Wilson and Frank T. Redwood,

Defendants in Error.

Upon reading the petition of the Mayor and City Council of Columbus, Mississippi, plaintiff in error, it is ordered that the writ of error returnable into the United States Circuit Court of Appeals for the Fifth Circuit, be allowed as prayed for, the same to be returnable into the said Court within 30 days from this date, on the plaintiff in error giving bond in the sum of one thousand ($1000) dollars conditioned according to law, to be approved by the clerk of said Circuit Court of said Northern District of Mississippi, or his deputy at Aberdeen, Mississippi, as is provided by agreement of counsel on file.

The attorneys for all parties having personally appeared before me, and agreed and stipulated, that a bond for writ of error and supersedeas should be fixed at one thousand ($1000) dollars, and having filed an agreement to same effect in writing. Let supersedeas issue.

Ordered this 12th day of December, 1894.

H. C. Niles, Judge.

Endorsed:

Received in office and filed this December 12th, 1894.

G. R. Hill, Clerk.

(Which said agreement as to amount of bond
128 for writ of error filed November 16, 1894, is in words and figures following, to-wit:)

Agreement as to Amount of Bond.

The United States of America,
Eastern Division of the Northern } Circuit Court.
District of Mississippi.

John M. Dennison, James G. Wilson, and Frank T. Redwood, vs the Mayor and City Council of Columbus, Mississippi.

In this cause, it is agreed and stipulated, that the bond for writ of error and supersedeas, may be fixed at the sum of one thousand dollars. And that the same may be approved, by either the Clerk of said Court or his deputy at Aberdeen, Mississippi.

Agreed to this the 16th day of November, 1894.

Critz & Beckett,
Atty's Plaintiffs.

Endorsed:
Filed November 16th, 1894.
G. R. Hill, Clerk.

Appeal Bond.

And on said 12th day of December, 1894, an appeal bond was filed in words and figures, following, to-wit:)

Know all men by these presents, that we, the Mayor and City Council of Columbus, Mississippi, as principal, and T. O. Burris and W. L. Jobe, as sureties, are held and firmly bound unto John M. Dennison, James G. Wilson and Frank
T. Redwood in the full and just sum of one thou-
129 sand dollars, to be paid to the said John M. Dennison, James G. Wilson and Frank T. Red-

wood, their executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated, this 30th day of November, in the year of our Lord, one thousand eight hundred and ninety-four.

Whereas, lately at a term of the Circuit Court of the United States, for the Eastern Division of the Northern District of Mississippi, in a suit pending in said Court, between John M. Dennison, James G. Wilson and Frank T. Redwood, Plaintiffs, and the Mayor and City Council of Columbus, Mississippi, a judgment was rendered against the said the Mayor and City Council of Columbus, Mississippi, and the said the Mayor and City Council of Columbus, having obtained a writ of error and filed a copy thereof in the clerk's office of the said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said John M. Dennison, James G. Wilson and Frank T. Redwood, citing and admonishing them to be, and appear at the United States Circuit Court of Appeals, for the Fifth Circuit, to be holden in New Orleans, La., within thirty days from the date thereof.

Now the condition of the above obligation is such, that if the said the Mayor and City Council of Columbus, shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force
130 and virtue.

Sealed and delivered.

Mayor and City Council of Columbus, [seal]
By A. J. McDowell, Mayor. [seal[
In presence of T. O. Burris, [seal]
S. W. Baker. W. L. Jobe. [seal]
Approved by Attest: S. W. Baker,
H. C. Niles, [seal] Sec'y and Treasurer
Judge. of Columbus, Miss.

Before me, J. T. Armstrong, Clerk of the Circuit Court, of the County of Lowndes, State of Mississippi, personally appeared W. L. Jobe and T. O. Burris, who being by me first duly sworn, each for himself, swears that he is worth the amount of the foregoing bond, over and above all legal exemptions and liabilities.

Subscribed and sworn to before me, this 30th day of Nov., 1894.
J. T. Armstrong, Clerk
Circuit Court Lowndes co., Miss.

T. O. Burris,
W. L. Jobe.

I hereby approve the within and foregoing bond.

G. R. Hill, Clerk.
By Wm. G. Elkin, D. C.,
at Aberdeen.

Endorsed:

Filed in Clerk's office December 12th, 1894.
G. R. Hill, Clerk.

And on said 12th day of December, 1894, a
131 Writ of Error was issued in the words and figures following, to-wit:

Writ of Error.

United States of America, ss.

The President of the United States,

To the Honorable, The Judge of the Circuit Court of the United States, for the Eastern Division of the Northern District of Mississippi—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between John M. Dennison, James G. Wilson and Frank T. Redwood, Plaintiffs, and the Mayor and City Council of Columbus, (Mississippi,) defendant, a manifest error hath happened, to the great damage of the said the Mayor and City Council of Columbus, Mississippi, Plaintiff in Error, as by its complaint ap-

pears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of appeals for the Fifth Judicial Circuit, together with this writ, so that you have the same at New Orleans, La., within 30 days from the date hereof, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said United States Circuit Court
132 of Appeals, may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, of the United States, the 12th day of December, in the year of our Lord One Thousand Eight Hundred and Ninety-Four.

[L. S.]
Allowed by
H. C. Niles,
Judge.

G. R. Hill, Clerk of the Circuit Court of the United States, Eastern Division of the Northern District of Mississippi, and seal of Circuit Court.

Endorsed:

By virtue of the within Writ of Error, I herewith send, under the seal of the United States Circuit Court, for the Eastern Division of the Northern District of Mississippi, at Aberdeen, distinctly and openly, all the record, process, proceedings and judgment, with all things concerning the same, in the case therein mentioned, viz.: John M. Dennison, James G. Wilson and Frank T. Redwood, Plaintiffs, and the Mayor and City Council of Columbus, Mississippi, Defendants, to the United States Circuit Court of Appeals for the

Fifth Judicial Circuit, together with this writ, as directed and required by said Writ of Error.

Endorsed: [L. S.] G. R. Hill, Clerk.
Received and filed in office December 12th, 1894.
G. R. Hill, Clerk.

133 And on said 12th day of December, 1894, a citation was issued and filed, in the words and figures following, to-wit:

Citation.

United States of America, ss.
The President of the United States,

To John M. Dennison, James G. Wilson and Frank T. Redwood:—Greeting:

You are hereby cited and admonished, to be and appear, at a United States Circuit Court of Appeals, for the Fifth Judicial Circuit, to be holden at New Orleans, La., within thirty days from the date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the Circuit Court of the United States, for the Eastern Division of the Northern District of Mississippi, wherein the Mayor and City Council of Columbus, Mississippi, is Plaintiff in Error, and you are defendants in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 12th day of December, in the year of our Lord, One Thousand Eight Hundred and Ninety-Four.

Henry C. Niles, Judge,

and G. R. Hill, Clerk of said U. S. Circuit Court Eastern Division, Northern Dist. Miss., and seal said Circuit Court.

[L. S.]

Endorsed:

We, Critz & Beckett, attorneys of record for J. M. Dennison, J. G. Wilson, and Frank T. Redwood, do hereby accept and acknowledge, due, legal and sufficient service of the within citation, and waive any other or further service thereof, either on us or the defendants in error.

Critz & Beckett, Attorneys
for defendants in error.

This December 12th, 1894.

Endorsed further:

Received and filed in office the 12th day of Dec., 1894.

G. R. Hill, Clerk.

United States of America, Northern District of Mississippi, Eastern Division.

I, G. R. Hill, Clerk of the Circuit Court of the United States for the Eastern Division of the Northern District of Mississippi, do hereby certify that the foregoing, one hundred and 33 pages, contain a true and perfect transcript of the record and proceedings, had in said Court in the cause of John M. Dennison, James G. Wilson and Frank T. Redwood, vs. The Mayor and City Council of Columbus, Mississippi, numbered 265, as fully as the same appears of record and on file in my office.

Witness my hand and the seal of said Court at Aberdeen in said District and Division, the 19th day of December, 1894.

[SEAL.]

G. R. Hill, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS,

FIFTH CIRCUIT.

November Term, 1894.

Wednesday, January 12, 1895.

(*Extract from Minutes.*)

THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISSISSIPPI,
Plaintiff in Error,

vs.

JOHN M. DENNISON, J. G. WILSON AND FRANK T. REDWOOD,
Defendant in Error.

This cause was called this day and submitted after argument by Mr. Wm. Baldwin and Mr. George A. Evans for plaintiff in error, and Mr. R. C. Beckett and Mr. F. A. Critz for defendant in error; and it is ordered that attorneys for plaintiff in error have leave to file a brief in reply to brief of defendant in error filed this day, within one week from this date.

UNITED STATES CIRCUIT COURT OF APPEALS,

FIFTH CIRCUIT.

November Term, 1894.

Tuesday, April 23, 1895.

(*Extract from Minutes.*)

THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISSISSIPPI,
Plaintiffs in Error,

vs.

JOHN M. DENNISON, J. G. WILSON AND FRANK T. REDWOOD,
Defendants in Error.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Mississippi, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Circuit Court in this case be, and the same is hereby affirmed.

It is further ordered and adjudged that the plaintiffs in error, The Mayor and City Council of Columbus, Mississippi, and the sureties on the writ of error bond herein, T. O. Burris and W. L. Jobe, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of said Circuit Court.

OPINION.

UNITED STATES CIRCUIT COURT OF APPEALS,

FIFTH CIRCUIT,

November Term, 1894.

(*Filed April* 23, 1895.)

THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS.,

Plaintiffs in Error,

vs.

JOHN M. DENNISON, JAMES E. WILSON AND FRANK T. REDWOOD,

Defendants in Error.

In Error to the Circuit Court of the United States for the Northern District of Mississippi, Eastern Division.

Before PARDEE and MCCORMICK, Circuit Judges; and TOULMIN, District Judge.

By the Court:

The majority being satisfied with the reasons for judgment given in the Opinion of the trial Judge, and the Court finding no reversible error in the proceedings, the judgment of the Circuit Court is affirmed.

TOULMIN, Judge, dissents.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE FIFTH CIRCUIT.

I, J. M. McKee, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing 116 pages contain a true copy of the record, process, proceedings, and all papers in the case of

THE MAYOR AND CITY COUNCIL OF COLUMBUS, MISS.,

Plaintiffs in Error,

No. 342. vs.

JOHN M. DENNISON, J. G. WILSON AND FRANK T. REDWOOD,

Defendants in Error,

as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the Seal of said United States Circuit Court of Appeals, at the city of New Orleans, this 28th day of December, A. D., 1895.

[SEAL OF COURT.]

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.